

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M No.11605 of 2015 (O&M)

Date of decision: 27.04.2017

Ritu Bhatia

....Petitioner

Versus

Raman Bhatia

....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vishal Yadav, Advocate
for Mr. Ajay Ghangas, Advocate
for the petitioner.

Mr. Atul Gaur, Advocate
for Mr. Sumeet Goel, Advocate
for the respondent.

REKHA MITTAL J.

CRM No.12646 of 2017

Heard.

Allowed as prayed for.

Annexures P6 and P7 are taken on record subject to just
exceptions.

Disposed of accordingly.

CRM-M No.11605 of 2015

The present petition directs challenge against order dated
24.12.2014 passed by the District Judge (Family Court), Faridabad
whereby application filed by the petitioner for restoration of the
application filed under Section 125 of the Code of Criminal Procedure
(in short 'Cr.P.C.') has been dismissed.

Counsel for the petitioner would urge that marriage of the petitioner with the respondent was solemnized on 02.03.1995 and she was turned out of the matrimonial home on 07.07.2003. The petitioner filed an application under Section 125 Cr.P.C in the year 2006 and the same was dismissed in default by the District Judge (Family Court), Faridabad vide order dated 15.07.2010. The petitioner filed an application (Annexure P2) for restoration of the application but the same has been dismissed by the District Judge (Family Court), Faridabad vide order dated 24.12.2014 primarily on the ground that the application is hopelessly barred by limitation and the same could be filed within 30 days from the date of its dismissal.

Counsel for the petitioner would urge that, no doubt, there was delay in filing the application for restoration but the petitioner has explained the circumstances under which she did not seek restoration of the proceedings as the respondent – husband kept on making false promises to the petitioner for bringing her back to the matrimonial home but later he refused. It is further argued that as the respondent did not file any response to the application for restoration, the averments raised in the application for restoration and so also the application for condonation of delay are to be taken as correct. Another submission made by counsel is that in case the petition filed in the year 2006 is not ordered to be restored, a serious prejudice shall be caused to the petitioner in asserting her lawful claim to get maintenance from her husband since 2006, though she was turned out of the matrimonial home in July, 2003. However, counsel for the petitioner would fairly concede that in case the petition is restored, the petitioner would forego

her claim for maintenance w.e.f. 15.07.2010 till filing of application for restoration in December, 2012.

Counsel for the respondent has supported the impugned order with the submission that the very fact that the petitioner allowed the proceedings to be dismissed in default and further did not file any application for restoration for a period of more than two years would indicate that the petitioner did not require any maintenance. Further argued that later the application for restoration was filed with an intent to harass and prolong agony of the respondent. In addition, it is argued that the petitioner has already filed another application for claiming maintenance and the same is pending.

I have heard counsel for the parties and perused the records.

Before advertng to the submissions made by counsel for the parties, it is pertinent to mention that the object of Section 125 Cr.P.C. is to achieve a social purpose to protect women and children from destitution and vagrancy. It provides a speedy remedy for supply of food, clothing and shelter to the deserted wife. The proceedings under Section 125 Cr.P.C. are not criminal in nature rather the same are quasi civil. There is nothing on record suggestive of the fact that prior to 15.07.2010, there was any default on the part of petitioner in pursuing her remedy. Counsel for the respondent has failed to point out any materials on record that delay in non-disposal of the proceedings since 2006 can be attributed to the petitioner – wife. As has been rightly argued by counsel for the petitioner that as the respondent – husband did not cause appearance to contest the proceedings for restoration,

there is no challenge to the averments raised by her in the application for restoration of the petition as well as condonation of delay, supported by a duly sworn affidavit of the petitioner. I would hasten to add that as there is no provision in the Cr.P.C. providing for restoration of the application, there is no question of any limitation being provided for either in Cr.P.C. or in the limitation law as has been sought to be invoked by the trial Court. The petitioner has fairly proposed to forego her right to maintenance since dismissal of the petition till filing of application for restoration in December, 2012. Taking a cumulative, reasonable and sympathetic view of the matter, in my considered opinion, order impugned cannot be allowed to sustain and liable to be set-aside. However, it is clarified that in case the application for maintenance is ultimately allowed by the trial Court, the petitioner shall not be entitled to maintenance for the period from 15.07.2010 to 20.12.2012. It is also left open to be decided by the trial Court if the applicant shall be entitled to maintenance from the date of order or from the date of application in the light of provisions of Section 125(3) Cr.P.C.

For the foregoing reasons, the petition is allowed in the aforesaid terms.

27.04.2017
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No