

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

Criminal Misc. No.M- 16045 of 2017 (O&M)

Date of decision : September 14, 2017

Rajinder Pal Singh

.....Petitioner

Versus

Paramjit Kaur and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Arpan Sabharwal, Advocate
for the petitioner.

LISA GILL, J.

The petitioner is aggrieved of order dated 01.05.2014 passed by the learned Judicial Magistrate First Class, Kapurthala and order dated 15.10.2016 passed by the learned Additional Sessions Judge, Kapurthala.

Brief facts of the case are that a petition under Section 125 Cr.P.C. was filed by the respondents i.e. the petitioner's wife and minor child claiming maintenance to the tune of ₹5,000/- each and litigation expenses to the tune of ₹10,000/- It was averred in the petition under Section 125 Cr.P.C. that marriage was solemnised between the petitioner and respondent No. 1 on 28.04.2007. A child was born out of this wedlock. The child was being looked after by the respondent-wife. Allegations of harassment, physical and mental abuse on account of bringing less dowry are raised. She was ultimately driven out of the matrimonial home and perforce having to live with her parents. The petitioner along with his father was stated to be cultivating land over 14 acres and earning more than ₹20,000/- per month.

These allegations were denied by the petitioner while stating that the respondent-wife had withdrawn from his company without any reasonable cause. A petition under Section 9 of Hindu Marriage Act, 1955 (for short – 'the Act') filed by the petitioner was decreed in his favour on 20.03.2014. Moreover, he is a small farmer having no agricultural land in his own name. Evidence was led by both the parties.

Learned trial Court on considering the evidence on record, the facts and circumstances of the case, directed the petitioner to pay a sum of ₹5,000/- per month to each of the respondents from the date of filing of the petition.

Revision petition preferred by the petitioner was dismissed by the learned Additional Sessions Judge, Kapurthala vide order dated 15.10.2016.

Aggrieved therefrom the present petition has been filed.

Learned counsel for the petitioner vehemently argues that it is proved on record that the respondent-wife withdrew from the petitioner's company without any reasonable cause. She is, therefore, not entitled to any maintenance. He refers to judgment dated 20.03.2014 (Annexure P-3) whereby his petition under Section 9 of the Act was allowed. It is further submitted that the petitioner was acquitted in the complaint filed by the respondent-wife under Sections 406, 498A IPC. Therefore, the impugned orders should be set aside and the petition under Section 125 Cr.P.C. filed by the respondents should be dismissed.

I have heard learned counsel for the petitioner and have gone through the file with his able assistance. Marriage between the parties is not in dispute. Neither is the birth of the child out of this wedlock. It is noticed

that petition under Section 125 Cr.P.C. was filed by the respondents on 16.07.2008. The petitioner appeared before the learned trial Court on 15.09.2008 in the said proceedings. Admittedly, petition under Section 9 of the Act for restitution of conjugal rights was filed by the petitioner on 29.09.2008 i.e. clearly, subsequent to the petition under Section 125 Cr.P.C. filed by the respondent-wife. In the written statement/reply filed in the present proceedings, there is no mention about the filing/pendency of the petition under Section 9 of the Act. In this situation, it is rightly observed by the learned Additional Sessions Judge, Kapurthala that petition under Section 9 of the Act, is clearly a counter blast to the present proceedings. Intention of the petitioner to bypass his liability in this fashion and lack of bona fides on his part is further evident from the fact that the petitioner's wife and child were admittedly living separately since 2007 but the petition under Section 9 of the Act was filed subsequent to initiation of present proceedings under Section 125 Cr.P.C. Therefore, the petitioner cannot derive any benefit from the said decision.

Contention of learned counsel for the petitioner that the petitioner's acquittal in a complaint under Section 406/498A IPC proves that no cruelty or harassment was meted to the respondent-wife due to which she had leave the matrimonial home, is not tenable. Acquittal of the petitioner being afforded the benefit of doubt does not per se prove that the wife had withdrawn from the petitioner's company without any reasonable cause.

Learned counsel for the petitioner is unable to assail the quantum of maintenance either. It has come on record that the entire agricultural land of the petitioner's father was transferred in favour of one of the six sisters of the petitioner as per the Jamabandi of the year 2006-07.

The said property is, however, in the cultivating possession of the petitioner.

Jamabandi of the year 2005-06 reflects the petitioner to be an owner in possession of land measuring 39 Kanal and 2 Marlas. Therefore, in the facts and circumstances of the case assessing the maintenance at the rate of ₹5000/- per month to the respondent-wife and the minor child each is not excessive. Interim maintenance was granted to the respondents in the present proceedings on 15.04.2009 and the main petition was allowed on 01.05.2014. It is informed that the petitioner has not remitted any amount of maintenance towards the respondents.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the impugned orders dated 01.05.2014 passed by the learned Judicial Magistrate First Class, Kapurthala and order dated 15.10.2016 passed by the learned Additional Sessions Judge, Kapurthala, which calls for interference by this Court in exercise of powers under Section 482 Cr.P.C.

The petition is, accordingly, dismissed.

September 14, 2017
rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No