

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

CRM-M-26075-2017(O&M)

Date of Decision:24.07.2017

Jagtar Singh

.....PETITIONER

Vs.

Gurpreet Kaur and others

.....RESPONDENTS

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present:

Mr.Bipin Sharma, Advocate and
Mr.Abhimanyu Kalsy, Advocate for the petitioner.

LISA GILL J.(Oral)

The petitioner seeks quashing of order dated 17.05.2017(Annexure P-1) passed by the learned Chief Judicial Magistrate, S.A.S. Nagar, Mohali, whereby application dated 20.02.2017(Annexure P-3) filed by the petitioner for dismissal of the petition under Section 125 Cr.P.C.(preferred by the respondents) on the ground of maintainability, has been dismissed.

The respondents preferred a petition under Section 125 Cr.P.C. for grant of maintenance. During the pendency of the said petition under Section 125 Cr.P.C., a settlement was arrived at between the petitioner and respondent no.1 on 01.06.2015. Pursuant to the settlement, respondent no.1 alongwith their three minor children returned to her matrimonial home on 14.06.2015. All of them live together for five months. However, respondent no.1 alongwith two minor children i.e. respondents no. 3 and 4 left the matrimonial home again. Respondent no.2, who is the petitioner's daughter from his first marriage is still with the present petitioner.

In this situation learned counsel for the petitioner argues that the petition filed under Section 125 Cr.P.C. in the year 2015 does not survive on the

basis of the conditions mentioned therein. If at all any cause of action survives to the said respondents, a fresh petition can be filed by them. It is further contended that respondent no.1 was married earlier as well and she had not obtained a valid divorce from her first husband before solemnizing marriage with the present petitioner. In this respect, a criminal complaint has been filed by the petitioner on 01.03.2017 and the matter is still pending. In this view of the matter, respondent no.1 in any case is not entitled for any maintenance from the petitioner, as she is not his legally wedded wife.

Learned counsel argues that the petition under Section 125 Cr.P.C. should have been withdrawn in view of the compromise but the respondents kept the matter alive in an illegal manner despite the settlement. Moreover, one of the three minor children is being looked after by the petitioner. It is thus submitted that the impugned order dated 17.02.2017 be set aside and the petitioner's application (Annexure P-3) be allowed.

I have heard learned counsel for the petitioner and have gone through the file with his able assistance.

It is not in dispute that respondent no.1 and the petitioner cohabited with each other. Two children i.e. respondents no. 3 and 4 were born out of this wedlock. Settlement arrived at between the parties on 01.06.2015 is admitted. Pursuant to the said settlement, respondent no.1 along with three children(one child from the petitioner's first marriage) returned to the matrimonial home and lived with the petitioner for a few months.

The petitioner was acquitted of the charges under Sections 323, 325 and 498-A IPC on 31.10.2015. The petitioner thereafter submitted a complaint against the respondent wife in this respect which is pending. Learned counsel greatly stresses upon the cross examination of the respondent wife in the

proceedings in FIR No. 84. However, the learned trial Court has rightly held that merely because certain admissions have been made by respondent no.1 in proceedings under FIR no.84, dated 31.10.2015 for the offences punishable under Sections 323, 325 and 498-A IPC, a conclusion can not automatically be drawn that the petition under Section 125 Cr.P.C. has become infructuous.

Similarly, contention of the petitioner that respondent no.1 is not his legally wedded wife or the aspect that the minor child i.e. respondent no.2 is in custody of the petitioner cannot be a ground to dismiss the petition under Section 125 Cr.P.C. as infructuous. These are aspects which shall necessarily be considered by the learned trial court at the time at the time of awarding of interim maintenance/decision of the case.

Learned counsel for the petitioner is unable to point out any illegality or infirmity in the impugned order dated 17.05.2017(Annexure P-1) passed by learned Chief Judicial Magistrate, S.A.S. Nagar, Mohali, which calls for interference by this Court in exercise of jurisdiction under Section 482 Cr.P.C.

Consequently, this petition is dismissed.

(LISA GILL)
JUDGE

24.07.2017
Anjal

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No