

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

CRM-M-31317-2017

Date of decision: 31.8.2017

Rahul

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.SK Birla, Advocate for the petitioner

JITENDRA CHAUHAN, J.

The present petition under Section 482 of the Code of Criminal Procedure has been filed for setting aside the order dated 16.8.2017 (Annexure P1) passed by learned Sub- Divisional Judicial Magistrate, Koshli vide which, the petitioner was awarded civil imprisonment for a period of one month due to non payment of the maintenance to his wife-respondent No.2.

It is submitted that the learned trial Court vide order dated 18.5.2017, directed the petitioner to pay maintenance to respondent No.2-wife. The petitioner has laid a challenge to the order passed by the trial Court. The same is pending adjudication before learned District Judge, Rewari. It is asserted that by ignoring the fact of pendency of the revision petition, learned Sub Divisional Judicial Magistrate, Kosli has awarded civil imprisonment for a period of one month with a condition

that in case the amount is paid before 16.9.2017, he be released. The petitioner is undergoing treatment for neurological problem. He is having no source of income and also is unable to procure any job. Respondent No.2 is living in adultery and as per Section 125(4) Cr.P.C. she is not entitled to any maintenance.

Heard.

The petitioner has a moral as well as legal obligation to maintain the respondent-wife so that she can feed and maintain herself particularly when she has no other source of income. The young wife and children born out of the wedlock cannot be left to starve and suffer because of inaction or incapacity of the petitioner. Section 125 Cr.P.C. is defined to give effect to the basic and moral duty of the husband to look after the needs of his wife and children particularly when there is nothing on record to suggest that the petitioner is unable or incapacitated to maintain the wife and the children. If this is allowed to happen, then the intended purpose of Section 125 Cr.P.C. to protect women and children and rights afforded to the dependents under Article 15 (3) reiterated in Article 39 of the Constitution of India shall stand defeated.

Hon'ble the Supreme Court has also held in **Shail Kumar Devi Vs. Krishan Bhagwan Pathak @ Krishan B.Pathak 2008(3) RCR (Criminal) 842** that maintenance is a right which accrues to a wife against her husband and minute the former gets married to latter. It was further held that it is not only a moral obligation but is also a legal duty cast upon the husband to maintain his wife. Bearing these legal

principles in mind, it is to be seen whether the petitioners are entitled to claim maintenance from the respondent who has allegedly refused to maintain them despite being possessed of sufficient means.

The petitioner is a young able bodied person of 28 years age. There is a son born out of the wedlock of the parties maintained respondent No.2-wife. From the impugned order, it appears that he had refused to pay maintenance amount to respondent No.2-wife as per order dated 18.5.2017. The petitioner is silent about the order passed by learned Additional Sessions Judge, Rewari in the revision petition preferred by him. It appears that he has scant regard for the order passed by the Court. The trial Court was left with no option but to commit the petitioner to civil imprisonment. The impugned order does not suffer from any infirmity or perversity much less illegality.

In view of the above, the present petition being devoid of merit is dismissed.

31.8.2017
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?
Whether reportable?

Yes / No
Yes / No