

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

Crl. Misc. M-32603 of 2017 (O&M)
Date of Decision: September 05, 2017

Krishan Kumar

...Petitioner

Versus

Pooja

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Vikrant Rana, Advocate
for the petitioner.

JAISHREE THAKUR, J. (Oral)

This is a petition that has been filed under Section 482 Cr.P.C. for quashing of the judgment dated 30.05.2017 passed by learned Addl. Sessions Judge, Jind, whereby the revision filed by the respondent-wife against the order dated 05.06.2015 passed by learned Judicial Magistrate Ist Class, Jind, was allowed and the petitioner herein was directed to pay a sum of Rs.4000/- per month as interim maintenance.

2. Counsel for the petitioner contends that the Revisional Court gave a perverse finding by upsetting the well reasoned order of the trial court, declining interim maintenance to the respondent-wife. It is argued that the respondent is not legally wedded wife of the petitioner, because she had not disclosed the existence of her marriage and with the subsistence of her first marriage, the second marriage performed with the petitioner would be void and she would not be entitled to any relief.

3. I have heard counsel for the petitioner and minutely perused the

record of the case.

4. Vide the impugned judgment dated 30.05.2017, learned Addl. Sessions Judge, Jind, while allowing the revision filed by the respondent-wife, had observed as under;-

*“11. The factum of first marriage is to be decided by way of evidence and mere report given by the Protection Officer regarding first marriage of the revisionist cannot be considered as absolute proof of first marriage when it is a matter of evidence and moreover, learned trial court is not competent to decide the validity of the marriage and in this regard this court rely upon case law reported as **Sunita @ Kavita Vivekanand More and others vs. Vivekanand Shripati More and others, 2001(2) RCC 688** where it has been held that the Magistrate is not competent to decide the validity of the marriage. The proper course in such case is to grant maintenance, leaving the husband to establish invalidity of marriage in competent court. Case law relied upon by learned counsel for the respondent is distinguishable on the facts and circumstances of the present case as in that case the dispute was under the Domestic Violence Act whereas, the present dispute is under Section 125 Cr.P.C. Moreover, the learned trial court has made observation that the dispute between the parties is bona fide which requires investigation and adjudication and considering this, the learned trial court committed a grave error in not allowing the interim maintenance to the revisionist.”*

5. The whole edifice of the case of the petitioner is that the

respondent, without getting a divorce from her first husband, cannot be called the legally wedded wife of the petitioner and therefore, she would not be entitled to any maintenance. At the present moment, except for the report of the Protection Officer, mentioning therein about the first marriage of the respondent, the petitioner has not been able to establish his stand by producing any cogent and convincing evidence that there is no divorce. Further, it is not disputed that apart from initiating the present proceedings under Section 125 Cr.P.C., the respondent had also got an FIR registered under Section 498-A, 406, 323, 506, 34 of Indian Penal Code against the petitioner-husband. The factum of the marriage is not disputed between the parties, it is only on the ground of alleged prior marriage of the respondent, the petitioner is trying to evade his responsibility of paying maintenance.

6. Since only interim maintenance has been awarded and evidence has yet to be concluded, this court is of the considered view that there is no infirmity in the impugned judgment dated 30.05.2017 passed by learned Addl. Sessions Judge, Jind.

7. Any observation made hereinabove are not to be taken as an opinion on the merits of the case.

8. In view of the above, the petition in hand, being devoid of any merits, is hereby dismissed.

September 05, 2017

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No