

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

CRM-M-35194-2017

Date of decision: 7.10.2017

Nidhi

...Petitioner

Versus

Rajeev

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.SSVirk, Advocate for the petitioner

Mr.PK Hooda, Advocate for the respondent

JITENDRA CHAUHAN, J.

The present petition under Section 482 of the Code of Criminal Procedure has been filed for setting aside the order dated 23.8.2017 passed by learned Judicial Magistrate, 1st Class, Panipat dismissing the application filed against order dated the 20.1.2017 vide which the petition filed under Section 125 Cr.P.C. was dismissed in default by learned JMIC, Panipat.

A petition under Section 125 Cr.P.C. was filed by the petitioner before learned Chief Judicial Magistrate/ Judicial Magistrate, 1st Class, Panipat for grant of maintenance allowance. On 13.12.2016, learned JMIC adjourned the case to 20.1.2017. On 20.1.2017, the counsel did not cause appearance and the case was ordered to be dismissed for non-prosecution. Thereafter, the petitioner filed an

application for restoration of the petition, which was also dismissed by learned JMIC vide order dated 23.8.2017.

It is submitted that the clerk of the learned counsel before the trial Court inadvertently noted down the next date of hearing as 20.2.2017 instead of 20.1.2017. The same date was noted in the counsel diary as well. On 20.2.2017, when the counsel appeared in the Court and enquired about his case, he was told that his case had been ordered to be dismissed for non-prosecution. Thereafter, he moved an application for restoration of the case, which was also dismissed. For the lapse on the part of the counsel, the petitioner should not be made to suffer.

On the other hand, learned counsel for the respondent does not raise any serious objection.

I have heard the learned counsel for the parties and perused the case file.

Hon'ble the Supreme Court in **State of Punjab vs. Davinder Pal Singh Bhullar and others 2012(1) RCR (Crl.) 126** has held as under:-

“27. If a judgment has been pronounced without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, inherent

powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 Cr.P.C. would not operate. In such eventuality, the judgment is manifestly contrary to the *audi alteram partem* rule of natural justice. The power of recall is different from the power of altering/reviewing the judgment. However, the party seeking recall/alteration has to establish that it was not at fault.”

Admittedly, the marriage of the parties was solemnized on 1.4.2013. The case of the petitioner is that her parents could not fulfil the demand of the respondent and his family and the petitioner was thrown out from the matrimonial home. Thereafter, the petitioner – wife filed a petition under Section 125 Cr.P.C. for grant of maintenance. Perusal of the case file shows that the absence of the counsel for the petitioner before the trial Court was neither deliberate nor intentional and it was due to noting down a wrong date by his clerk. The petitioner has not been benefitted by the impugned order. It is settled position of law that for the lapse on the part of the counsel, the petitioner should not be made to suffer. Moreover, the petitioner would not be benefitted by prolonging the matter. The respondent can be compensated by way of costs.

Section 125 Cr.P.C. is piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife, who is unable to maintain herself and her children.

Keeping in view the peculiar facts and circumstances of the case, the present petition is allowed and the orders dated 20.1.2017 and 23.8.2017 are set aside. The petition filed under Section 125 Cr.P.C. by the petitioner is ordered to be restored to its original number and stage subject to payment of Rs.5000/- as costs, to be paid to the respondent.

7.10.2017
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No