

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

Crl. Misc. M 46328 of 2017 (O&M)
Date of decision: 6.12.2017

Amit Bisht

...Petitioner

Versus

Neelam Bisht

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Davinder Lubana, Advocate
for the petitioner.

JAISHREE THAKUR, J.

This petition has been filed under Section 482 of the Code of Criminal Procedure seeking for quashing of order dated 5.10.2016 passed by the Judicial Magistrate Ist Class, Chandigarh as well as the order dated 15.11.2017 passed by the Additional Sessions Judge, Chandigarh.

In brief, the facts are that the petitioner and respondent solemnized marriage on 16.1.2016 at Nayagaon, SAS, Nagar, District Mohali, as per Hindu rites and ceremonies, which did not survive the test of time. Resultantly, the respondent herein preferred an application under Section 125 of the Code of Criminal Procedure (for short '**the Code**') seeking for interim maintenance for herself.

Notice of the application was given, which was contested. The petitioner also preferred an application seeking for medical examination of the respondent-wife by stating that she is suffering from mental disorder and their marriage has been solemnized by playing fraud upon him and his

family members. It is also contended that the marriage was never consummated between the parties. It is also argued that a suit for declaring the marriage null and void has already been filed.

After hearing learned counsel for the parties, the Judicial Magistrate First Class, Chandigarh, dismissed the application asking for medical examination to be conducted, while deciding the application for maintenance, the petitioner was directed to pay a sum of Rs. 3,000/- per month as interim maintenance by order dated 5.10.2016. These orders came to be challenged in revision petitions and the Additional Sessions Judge, Chandigarh, dismissed both the revisions. Aggrieved against the said orders, the instant petition has been filed.

Learned counsel for the petitioner contends that the application seeking a medical examination to ascertain the mental condition of the respondent/wife has wrongly been dismissed, while simultaneously allowing the application for interim maintenance under Section 125 of the Code. It is contended that the marriage between the parties was never consummated and, in fact, a fraud has been played upon the petitioner and his family members. Resultantly, the petitioner has already preferred a suit to have the marriage declared as null and void.

I have heard learned counsel for the parties and have also gone through both the orders that have been passed.

Admittedly, the petitioner herein solemnized marriage with the respondent as per Hindu rites and ceremonies. There is no dispute that as on date, she is his legally wedded wife and there is moral and legal obligation

imposed upon the petitioner to maintain her. The respondent preferred an application under Section 125 of the Code claiming maintenance on account of the fact that she has no adequate means to support herself. Taking note of this, the Judicial Magistrate First Class, held that the petitioner being of able body is capable of earning minimum Rs. 300/- per day and thus assessed the maintenance at Rs. 3,000/- per month. There is no infirmity in the said order since Section 125 of the Code has been enacted to ensure that a wife, minor child, aged parents are not subjected to vagrancy and destitution on account of paucity of funds.

As far as the question goes of rejection of the application seeking assessment of mental condition of the respondent-wife, this Court is not inclined to interfere in the matter as long as the respondent is legally wedded wife of the petitioner, who is bound under law to support and maintain her. Given the best case of the petitioner, even if the respondent is declared to be a person of unsound mind, he will still have moral and legal obligation to support her. In case, the petitioner feels any fraud has been played upon him and his family, he has already availed the remedy by filing a suit to have the marriage declared as null and void.

For the reasons afore-stated, the present petition is dismissed.

6.12.2017

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No