

CRM-M- 7388 of 2015

In the High Court of Punjab and Haryana at Chandigarh

CRM-M- 7388 of 2015

Date of Decision:23.2.2017

Pavneet Saini

---Petitioner

vs.

Charanjit Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Upender Prashar, Advocate
for the petitioner

Mr. Vivek Salathia, Advocate
for the respondent

Rekha Mittal, J.

The present petition directs challenge against order dated 24.7.2013 (Annexure P-6) passed by the Judicial Magistrate Ist Class, Amritsar whereby the petition filed under Section 125 of the Code of Criminal Procedure (in short "Cr.P.C.") was dismissed for non prosecution and dated 17.1.2015 (Annexure P-9) whereby application of the petitioner seeking restoration of the petition has been dismissed.

Counsel for the petitioner has submitted that Pavneet Saini, the then minor daughter of the respondent filed a petition under Section 125 Cr.P.C. for grant of maintenance on 12.10.2007. She was awarded interim maintenance @ Rs.10,000/- per month vide order dated 26.8.2010 (Annexure P-4). The case was fixed for evidence. On account of failure of the petitioner or her counsel to appear before the court, the petition was

dismissed in default on 24.7.2013. Application filed by the petitioner for restoration did not find favour with the trial court for the reasons assigned in the order dated 17.1.2015. It is vehemently argued that a serious prejudice is likely to be caused to the petitioner in case the proceedings are not restored to its original status and decided on merits. It is further argued that absence of the petitioner on 24.7.2013 was neither willful nor intentional but it was because of the reason that the petitioner and her mother had come to Chandigarh in connection with civil revision filed at the instance of the respondent and pending in this Court. To substantiate this contention, counsel has produced photocopies of ticket and visitor's pass issued by the Punjab and Haryana High Court, Chandigarh. Counsel would submit that original documents were appended with the application seeking restoration of the petition and the same are available on record.

Counsel for the respondent, on the contrary, has seriously opposed prayer of the petitioner primarily on three counts. The first submission made by counsel is that the trial court has no jurisdiction to review its order dismissing the petition in default, therefore, the only remedy available to the petitioner was to file an appeal/revision before the Court of Sessions. Another submission made by counsel is that in the revision petition filed before this Court challenging the order of interim maintenance allowed in favour of the petitioner, on 24.7.2013 presence of the petitioner or her mother has not been recorded. It has further been argued that the petitioner has attained the age of majority during pendency of the proceedings and as restoration of the petition, if allowed, would relate back to the date of dismissal, the petitioner otherwise is not eligible for

grant of maintenance after attaining the age of majority.

I have heard counsel for the parties, perused the paper book and the two documents (photocopies made available during the course of hearing).

So far as plea of the respondent with regard to maintainability of the petition, petition under Section 482 Cr.P.C. can be entertained by the Court irrespective that remedy of revision can be availed of by the petitioner. The jurisdiction under Section 482 Cr.P.C. can be exercised by this Court in case the same is necessary to prevent injustice. In this regard, reference can be made to recent judgment of Hon'ble the Supreme Court of India **Prabhu Chawla vs. State of Rajasthan and another 2016(4) RCR (Criminal) 270.**

The petitioner staked her claim for grant of maintenance by filing a petition in the year 2007 when admittedly she was minor. In case the proceedings are restored to its original stage, the same would relate back to the date of petition and not to the date when the petition was dismissed for non-prosecution. That being so, attaining of majority by the petitioner even by the time the proceedings were dismissed in default would be of no consequence in favour of the respondent. I would hasten to add that even if the petitioner has attained majority, she can still be allowed maintenance after attaining majority in case she has no means to maintain herself till she performs marriage and becomes dependent upon her husband. In this context, reference can be made to a judgment of this Court **Satish Kumar vs. State of Punjab, 2015 (1) RCR (Criminal) 256.**

The trial court has dismissed the application for restoration on

twin grounds namely the application was filed beyond a period of 30 days from the date of its dismissal and allowing application for restoration would amount to review of the order.

Qua filing of application beyond 30 days of dismissal, as a matter of fact, there is no provision in the Cr.P.C. for filing such an application, therefore, there can not be any provision prescribing any limitation for filing such an application. This reasoning adopted by the trial court is not tenable. With regard to allowing of application amounting to review of order, this aspect would be examined by this Court in some appropriate case. However, taking into consideration plenary power under Section 482 Cr.P.C., in the given facts and circumstances, it is a fit case wherein exercise of inherent jurisdiction is warranted to sub serve ends of justice. Neither the petitioner can be deprived of her right to claim maintenance from her father nor the respondent can be allowed to escape his liability to pay maintenance to his daughter by taking any technical view of the matter.

There is nothing on record to suggest that absence of the petitioner on 24.7.2013 was willful much less actuated by mala fide. The two documents, photocopies whereof have been produced on record coupled with that counsel for the respondent has not disputed that the originals are available on the records of the Court below, the petitioner had visited the Punjab and Haryana High Court on 24.7.2013 as per the visitor's pass issued in favour of Daljit Kaur and Pavneet Saini and for that reason the daughter and the mother could not cause appearance before the trial court. The petitioner has justified her absence from the proceedings before

the trial court which otherwise has caused a serious setback in her pursuit for claiming maintenance from her father.

The petition for maintenance was filed in the year 2007. It is surprising rather shocking that the proceedings were pending in July 2013 after a period of six years. Dismissal of the petition in July 2013 has further delayed the proceedings for approximately four years.

For the reasons aforesaid, the petition is allowed, orders dated 24.7.2013 and 17.1.2015 are set aside. As a natural corollary, the petition under Section 125 Cr.P.C. filed by Pavneet Saini is ordered to be restored to its original number and stage. The trial court shall put its best efforts to conclude the proceedings expeditiously preferably within a period of three months of receipt of certified copy of the order.

(Rekha Mittal)
Judge

23.2.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No