

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

CRR(F)-292-2015

Date of decision: 02.11.2017

Jaswinder Singh

...Petitioner

Versus

Maneesha Rani

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Vijay Lath, Advocate,
for the petitioner.

JAISHREE THAKUR, J. (ORAL)

This is a petition that has been filed by the petitioner seeking to challenge the impugned order dated 03.07.2015 passed by learned Addl. District & Sessions Judge, District Judge (Family Court), Ambala allowing a petition filed by the respondent-wife under Section 125 Cr.P.C. awarding maintenance allowance of ₹ 4,000/- to the respondents i.e. ₹ 2,000/- per month to the respondent-wife and ₹ 1,000/- per month each to the two minor children.

In brief, facts are that the petitioner was married to respondent-Maneesha Rani in the year 2007 as per Hindu rites and ceremonies. Out of this wedlock, two children were born on 26.12.2007 and 17.08.2010. On account of demand of dowry, she got registered a case under Sections 406, 498-A of the IPC against the petitioner and his family members. However, on account of sureties being given to her at the hands of her husband, she turned hostile and the petitioner and his family members were acquitted in the said criminal case. The demand of dowry did not stop and eventually the

respondent-wife left the matrimonial home and filed a petition under Section 13 of the Hindu Marriage Act, 1955 which was allowed by judgment dated 30.10.2012. The respondent-wife also filed a petition under Section 125 Cr.P.C. seeking maintenance on 27.10.2012 in which evidence was led. The Addl. District & Sessions Judge while taking note of the evidence recorded therein, held that the respondent/husband cannot escape from the liability to maintain the wife and minor children, even though, the respondent has obtained a decree of divorce from the Courts below. It was held that a casual labourer has an earning between ₹ 250/- to ₹ 300/- per day and, therefore, the petitioner would be liable to pay a sum of ₹ 4,000/- to the respondents i.e. ₹ 2,000/- per month to the respondent-wife and ₹ 1,000/- per month each to the two minor children. Aggrieved against this order, the present petition has been filed.

Learned counsel appearing on behalf of the petitioner argued that the maintenance as awarded is on the higher side. It is contended that the respondent herein had obtained a decree of divorce under Section 13 of the Hindu Marriage Act, 1955 and as such had voluntarily left the company of the petitioner and would not be entitled to claim maintenance. It is also argued that the petitioner herein is unable to get any job or labour work on account of his disability i.e. he suffers from the stammering.

I have heard learned counsel for the petitioner and perused the impugned order dated 03.07.2015.

Learned counsel for the petitioner herein argues that having left the matrimonial home, the respondent and the minor children would not be entitled to claim maintenance under Section 125 Cr.P.C. In this regard Sub-

section 4 of Section 125 Cr.P.C. has been relied upon. However, it is the opinion of this Court that said Section would not be applicable in the instant case. It is true that under the aforesaid section no wife shall be entitled to receive maintenance from her husband, in case, she is living in adultery or if without any sufficient cause she refuses to live with her husband, or if they are living separately by mutual consent. The respondent wife herein obtained an ex parte divorce and the same was not challenged in appeal by the husband as noted by Addl. District Judge. The divorce petition had been filed on the ground of cruelty (which was allowed ex parte), therefore, it became a sufficient ground for the respondent to have left the matrimonial home and the company of the petitioner herein. As per the explanation given to Sub-section 4 of Section 125 Cr.P.C. the term “wife” *includes a woman who has been divorced by, or **has taken a divorce from, her husband and has not been remarried.*** The respondent herein would fall under the necessary definition of the term “wife” which has been included for the purposes of this Chapter since she has not remarried.

The second contention raised by learned counsel for the petitioner that the petitioner herein is not able to support the respondent and his two children on account of the fact that he has a strutter, is an argument which is totally unsustainable. Law is very clear that an unskilled labour too is liable to provide maintenance and support to a wife (though divorced) and his minor children. The affliction of the petitioner would not be a hurdle to him in obtaining a job as a daily wagers or as an unskilled worker.

Section 125 Cr.P.C. has been incorporated as a mean of social legislation to provide maintenance to parents, minor children, wife etc. in

order to avoid destitution. In the instant case while taking into account the fact that the respondent and the minor children are wholly dependent upon the petitioner herein, learned Family Court has rightly come to the conclusion that the petitioner herein is bound to support the wife and the minor children. The maintenance as awarded by learned Family Court amounting to ₹ 4,000/- per month is not excessive keeping in view the expenses as on date. It cannot be lost sight that the respondent wife is to maintain two minor children along with ensuring their education.

In the considered opinion of this Court, the order passed by learned Addl. District Judge (Family Court) does not suffer from any infirmity and does not warrant any interference by this Court.

Dismissed.

02.11.2017

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes.

Whether reportable

No.