

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

**CRR(F) No.96 of 2015 (O&M)
Decided on: 16.05.2017**

Sanjeev Kumar

....Petitioner

Versus

Happy @ Harish and another

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Naveen Gupta, Advocate for the petitioner.

Mr. R.K. Rana, Advocate for the respondents.

REKHA MITTAL, J.

CRM No.13897 of 2015

Heard.

Allowed as prayed for.

Annexure P1 is taken on record subject to just exceptions.

Disposed of accordingly.

CRM No.4989 of 2016

Heard.

Allowed as prayed for.

Annexure P2 is taken on record subject to just exceptions.

Disposed of accordingly.

CRR(F) No.96 of 2015

The present petition directs challenge against order dated 09.02.2015 passed by the District Judge (Family Court) Ambala whereby application under Section 125 of the Code of Criminal Procedure (in short 'Cr.P.C.') filed by the respondents (minor children of the petitioner through their mother) has been allowed and they have

been awarded maintenance @ Rs.1,500/- each per month.

The sole submission made by counsel for the petitioner is that as mother of the respondents received an amount of Rs.90,000/- for herself as well as on behalf of the minor children, order granting maintenance to the children is not sustainable and liable to be set-aside. To substantiate his contention, counsel has pointed out that in her cross-examination, Smt. Sonia wife of the petitioner has admitted that it was settled that she shall not claim any maintenance on her behalf as well as on behalf of the children. She and the children shall not claim any right over property of the petitioner (respondent therein). She admitted it correct that she has signed the compromise/affidavit after reading and understanding the same. It is further argued that as per settled position in law, admission is the best proof of a fact. For this purpose, he has referred to judgment of Hon'ble the Supreme Court of India "**Narayan Bhagwantrao Gosavi Balajiwale vs Gopal Vinayak Gosavi and others**", AIR 1960 (SC) 100 wherein Hon'ble the Supreme Court has held that admission is the best evidence that an opposing party can rely upon and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous.

Counsel for the respondents has supported the impugned order with the submission that the petitioner cannot escape his liability to provide adequate maintenance to the children. It is further argued that any agreement entered into by mother of the minors to their disadvantage cannot create an estoppel against them to enforce their remedy under law by invoking Section 125 Cr.P.C.

I have heard counsel for the parties, perused the paperbook

particularly the order impugned.

There is no denial that the petitioner performed marriage with Ms. Sonia on 14.10.2007. Out of the wedlock, two children Happy @ Harish and Meenakshi @ Teena were born on 16.12.2008 and 09.11.2012. Marriage between the petitioner and Sonia was dissolved by a decree of divorce under Section 13-B of the Hindu Marriage Act. There was an agreement dated 02.04.2013 between the petitioner and his wife and in pursuance thereof, mother of the minors appears to have received an amount of Rs.90,000/- from the petitioner towards Istridhan, gifts and other articles. The question that calls for adjudication is ***whether any such agreement by mother of the minor can debar or create estoppel against them to enforce their right recognized by a statute?*** Indisputably, a minor is not competent to enter into an agreement and any agreement entered on behalf of the minor to his disadvantage cannot be enforced against the minor. It appears that when the petitioner and his wife agreed to dissolve their marriage on the basis of mutual consent, one child was barely 5-6 months old and the other one less than 05 years of age. It is difficult to comprehend as to why the mother agreed to sacrifice right of maintenance of the children by accepting a meagre amount of Rs.90,000/- towards permanent alimony and maintenance, etc. Under the given circumstances, it can be safely held that any such agreement entered into by the parties (husband and wife) is not at all sufficient to deny maintenance to the children. That being so, I do not find any merit in contention of the petitioner that the order impugned suffers from any error much less being absurd or illegal.

For the foregoing reasons, the petition is mis-conceived and merits rejection. As a natural corollary, the petition fails and is accordingly dismissed. However, the petitioner is at liberty to take recourse to appropriate remedy under law to seek recovery from his wife in case she has received any amount on behalf of the minors but did not utilize the same for them.

16.05.2017
yakub

(REKHA MITTAL)
JUDGE

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