

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

**CRR(F) No.29 of 2016
Decided on: 02.05.2017**

Satpal

....Petitioner

Versus

Vandana and another

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. R.S. Mamli, Advocate,
for the petitioner.

REKHA MITTAL, J.

The present petition directs challenge against order dated 26.11.2015 passed by the District Judge (Family Court), Hisar allowing maintenance @ Rs.3,000/- per month to respondent – wife and Rs.1,000/- per month to the minor child born out of the wedlock, from the date of filing application under Section 125 Cr.P.C.

Counsel for the petitioner has challenged the impugned order on two grounds. The first submission made by counsel is that the petitioner – husband filed a petition under Section 9 of the Hindu Marriage Act (in short 'the Act') seeking restitution of conjugal rights and the same was allowed by the Court on 27.04.2015, sufficient to negate plea of respondent No.1 that she is residing away from the matrimonial home due to alleged circumstances created by the petitioner – husband. The second submission made by counsel is that the petitioner has no permanent source of income, therefore, maintenance assessed by the Court is liable to be reduced.

I have heard counsel for the petitioner and perused the

paperbook particularly the order impugned.

Counsel for the petitioner has not disputed that the respondents filed an application under Section 125 Cr.P.C. on 15.12.2012. The petitioner filed the petition under Section 9 of the Act on 17.12.2012 but an ex parte decree was passed in his favour on 27.04.2015. There is nothing on record to suggest that after passing of the ex parte decree of restitution of conjugal rights, the petitioner sent an intimation to the respondent – wife much less calling upon her to resume cohabitation.

The trial Court in para 10 of the judgment has held that filing of a petition under Section 9 of the Act shall not create a bar on right of the wife to claim maintenance and relied upon two judgments, one passed by this Court *“Sanjay Chopra vs Shyama”*, 1999(2) Criminal Court Judgments, 429 and 430 and the other by the Chattisgarh High Court *“Santoshi Jaiswal vs Rakesh Jaiswal”*, 2015(2) RCR (Criminal) 731 and 732.

Counsel for the petitioner has not made any submissions to draw distinction between the controversy involved in those cases viz-a-viz the case at hand. In this view of the matter, I do not find any merit in contention of the petitioner that respondent No.1 can be denied maintenance merely because an ex parte decree of restitution of conjugal rights has been passed in favour of the husband.

This brings the Court to quantum of maintenance assessed by the trial Court. As has been noticed hereinbefore, the Court awarded total maintenance of Rs.4,000/- per month for the wife and minor daughter. The amount assessed by the trial Court may not be sufficient

to meet two square meals of the respondents what to talk of providing for clothing, housing, comforts much less luxuries.

The provisions of Section 125 Cr.P.C. are a benevolent social legislation, brought in force to save a wife, minor children and parents from destitution and vagrancy. The petitioner being the husband and father has a legal obligation to provide adequate maintenance to the respondents. The Courts have even gone to the extent of saying that if a person has renounced the world, he is supposed to return to social life for earning livelihood for his family. There is nothing on record suggestive of the fact that the petitioner is suffering from any disability rendering him unable to work and earn livelihood for his family. Even if we take a miser estimation of income of the petitioner on the basis of wage earned by a labourer, in the light of needs of two to meet their bare minimum requirements for food, clothing and shelter, it is difficult to accept that maintenance assessed by the Court below calls for reduction, in exercise of limited revisional jurisdiction.

For the foregoing reasons, the petition fails and is accordingly dismissed.

02.05.2017

yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No