

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

CRM-M-19422-2017

Date of decision:-10.9.2018

Sukhwinder Kaur and another

...Petitioners

Versus

Pargat Singh

...Respondent

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Ajay Arora, Advocate
for the petitioners.

Mr.J.S. Santwal, Advocate
for the respondent.

H.S. MADAAN, J.

Petitioners Sukhwinder Kaur, estranged wife and Baby Riya, minor daughter of Pargat Singh had filed a petition under Section 125 Cr.P.C. against Pargat Singh – respondent. Vide judgment dated 23.1.2017 passed by Judicial Magistrate Ist Class, Sirsa, the petition was accepted and respondent was directed to pay maintenance to the tune of Rs.2,500/- per month to petitioner No.1 and Rs.1,500/- per month to petitioner No.2 from the date of filing petition, in addition to paying Rs.15,000/- as litigation expenses to the petitioners.

The respondent challenged the said judgment by way of

filing a revision petition to the Court of Sessions, which was assigned to learned Additional Sessions Judge, Sirsa, who vide judgment dated 6.4.2017 allowed the revision petition partly observing that petitioner No.1 Sukhwinder Kaur is not entitled to any maintenance allowance from the revisionist and litigation expenses of Rs.15,000/- awarded were reduced to Rs.7,500/-, whereas maintenance awarded to minor petitioner No.2 was kept as intact.

Feeling dissatisfied with the said order, the petitioners have approached this Court by way of filing the instant petition under Section 482 Cr.P.C., notice of which was given to respondent, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

Here relationship between the parties is admitted i.e. petitioner No.1 Sukhwinder Kaur getting married with respondent on 23.9.2007 and giving birth to petitioner No.2 from the loins of the respondent. It is also not in dispute that the spouses are residing separately and Baby Riya is in custody of her mother. As per the case of petitioners, petitioner No.1 had left the matrimonial house on account of harassment and ill-treatment at the hands of her husband, whereas this fact is being refuted by the respondent. The trial Court on the basis of evidence adduced before it by both the parties and in light of the facts and circumstances of the case has not given any observation as to whether Sukhwinder Kaur – petitioner No.1 is residing separately from her husband for or without any justifiable reason.

Section 125 Cr.P.C. deals with order of maintenance of

wife, children and parents.

Sub-Section 4 provides that no wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

So it was necessary to determine as to whether petitioner No.1 has been residing separately from her husband for or without any sufficient reason, which aspect was certainly not looked into by the trial Magistrate. Learned Additional Sessions Judge, Sirsa while hearing the revision petition did look into that aspect. The relevant part of the judgment in that regard is contained in paras No.7 to 9, which for ready reference are being reproduced as under:

7. After hearing the rival contentions of both the sides and perusing the lower court record it has come to light that in the whole evidence adduced by the respondent No.1 there is no mention about the earning of the revisionist rather simply allegations against the revisionist and her parents regarding demand of dowry etc. were mentioned by the respondent No.1 in her examination-in-chief. Further she admitted that the revisionist and his parents are of labour class persons. During her cross-examination it has been admitted by the respondent No.1 that she has passed the course of A.N.M. It has been further admitted that her father is having a well built house and is drawing a salary of Rs.25000/- per month and is an income-tax assessee. She also stated that her father is maintaining her and her

daughter properly and there is no dispute with regard to their maintenance at her parental house. Further during her cross-examination she admitted that she is residing at her parental house since the last five years. She also refuted from her stand as taken in the petition regarding remarrying of the revisionist with one Sonia. From the bare perusal of the cross-examination it is very much crystal clear that the father of the respondent No.1 is maintaining the respondent No.1 and her daughter very well and there is no dispute regarding their maintenance. This Court finds force in the case law cited by the learned counsel for the revisionist titled as Surjit Kaur Vs. Gurnam Singh 2016(4) RCR (Criminal) 269, in which it was held that:- “Criminal Procedure Code, 1973, Section 125-Old age of husband and wife-Wife living separately with her son since prior to 1986-Claimed maintenance from husband in 2007 when he is in his late eighties-having no sufficient funds even to maintain himself-Wife deserted or living away from him without any reasonable cause-If she was able to maintain herself for a long period of 21 years, it was for her to explain as to how she lost her source of income suddenly, in the absence of which, she is not entitled to claim maintenance from her husband without showing that he neglected her-Mere an income of Rs.1800/- per month of husband cannot be considered sufficient even to maintain himself.” and the case law titled as Monu Songra Vs. Pinki

2016 (4) RCR (Criminal) 804, in which it was held that:-

“Court will have to determine whether a qualified woman who can get a job can sit idle and insist on maintenance. Everyone has to earn for himself or herself or at least make an effort and would not sit idle.” Both the aforesaid case law are fully applicable to the facts and circumstances in the present case as from the bare perusal of the cross-examination itself very much clear that respondent No.1 is having a diploma of A.N.M. and she is living separately from her husband from the more than last 5 years and there was no dispute with regard to her maintenance at her parental home. She has further admitted that revisionist and his parents are doing the labour works. All these facts convince this Court to take a lenient view in the matter of maintenance qua the revisionist.

8. No doubt the intention of the legislation incorporating section 125 Cr.P.C. is to avoid destitution and this provision gives a right to a wife to claim maintenance from her husband, but at the same time sub section (4) of section 125 Cr.P.C. postulate certain pre-conditions upon the wife, to qualify while filing such petition against her husband. One of these conditions is that if she has refused to live with her husband without any sufficient reason, then she will not be entitled to receive any allowance.

9. Further the revisionist has taken a stand that it is the respondent No.1 who used to leave her matrimonial house

and also refused to live with the revisionist without any reasonable cause and excuse. To rebut this stand no evidence was brought on record by the respondent No.1 before the learned lower court. Hence this Court again finds force in the contentions raised by the learned counsel for the revisionist and also finds force in the case law titled as Poonam Vs. Mahender Kumar 2016(1) RCR (Criminal) 613 in which it was held by Hon'ble Punjab & Haryana High Court that:- "Criminal Procedure Code, 1973, Section 125- Maintenance-Wife left matrimonial home leaving behind her Husband and two children without any reason- Wife claiming maintenance under Section 125 Cr.P.C.- Petition dismissed-Held, Wife who has deserted her husband without any reason is not entitled to maintenance." The ratio of this judgment is fully applicable to the facts and circumstances of the present case.

The revisional Court has observed that petitioner No.1 has not taken stand that she is unable to maintain herself and she has not described earning of her husband. Thus finding that when a woman herself without giving sufficient reason that she is unable to maintain herself and has not sought any relief/claim with regard to her maintenance, then a Court cannot give relief to that person.

Learned Additional Sessions Judge, Sirsa has observed that respondent – husband belongs to labour class and maintenance allowance of Rs.2,500/- per month has wrongly been granted to

petitioner No.1 by the trial Court while petitioner No.1 is a well educated lady, who is able bodied and can earn for herself, resultantly claim of petitioner No.1 was rejected and litigation expenses were reduced from Rs.15,000/- to Rs.7,500/-.

Section 482 Cr.P.C. deals with inherent powers of the High Court providing that nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

The present petition does not fall within four corners of 482 Cr.P.C. and I do not see any reason to interfere with the judgment passed by learned Additional Sessions Judge, Sirsa, while exercising jurisdiction under Section 482 Cr.P.C.

Hence, the petition stands dismissed accordingly.

(H.S.MADAAN)
JUDGE

10.9.2018
Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No