

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No. M-26471 of 2016 (O&M)
Date of decision : December 19, 2018

Naresh Gulati

....Petitioner

versus

Shalini Gulati and others

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. M.L.Sarin, Senior Advocate with
Mr. Anuj Raja, Advocate and
Mr. SS Narula, Advocate, for the petitioner

Mr. Hemant Bassi, Advocate,
Mr. Kanwar Pal Singh Cheema, Advocate and
Mr. Harmanjeet Singh, Advocate, for the respondents

Fateh Deep Singh, J. (Oral)

This petition under Section 482 Cr.P.C. has been moved by petitioner husband Naresh Gulati against respondent wife and two children. In his petition, the petitioner has sought quashment of orders dated 8.4.2016 passed by the court of learned Judicial Magistrate Ist Class, Chandigarh dismissing his application Under Order 7 Rule 11 read with Sections 10 and 151 of the Code of Civil Procedure (in short, CPC).

Heard Mr. M.L.Sarin, Senior Advocate assisted by Mr. Anuj Raja, Advocate and Mr. SS Narula, Advocate, for the petitioner and Mr. Hemant Bassi, Advocate, Mr. Kanwar Pal Singh Cheema, Advocate and

Mr. Harmanjeet Singh, Advocate, for the respondents and perused the records.

The brief back ground of this litigation emancipates on account of matrimonial disaccord between the couple as a consequence of which wife-applicant Shalini Gulati and her two children born out of this wedlock, with the present petitioner preferred an application under Section 125 of the Code of Criminal Procedure (in short, Cr.P.C.) seeking maintenance allowance in which the present application under the provisions of the CPC detailed above has come about. The preliminary grounds were that in the earlier litigation between the couple, the wife had withdrawn her six civil suits and that the same were withdrawn by her in the light of the assurance given by her to the Courts in Australia whereas she had given up jurisdiction available to her of the Courts in India and therefore, the present petition for maintenance was not maintainable and that similar litigation was pending between the parties in the Court in Australia and thus sought dismissal of the maintenance application.

The respondents in their stand denied the averments taking the plea that the husband/father was not paying maintenance to the applicants and that being proceedings under Section 125 Cr.P.C. provisions of Order 7 Rule 11 CPC and Section 10 and Section 151 CPC were not applicable and terming the application to be a misuse of the process of law sought its dismissal. It was through the impugned orders, the court of learned Judicial Magistrate Ist Class, Chandigarh vide its order dated 8.4.2016 dismissed the

said application with special costs of Rs 3000/-

Appreciating the submissions of the two sides as is the stand of the learned senior counsel for the petitioner Mr. M.L.Sarin assisted by Mr. Anuj Raja, Advocate and Mr. SS Narula, Advocate that the proceedings under Section 125 Cr.P.C. are summary, quasi civil, quasi criminal in nature where stricter principles of law are not to be applied and more over are primarily aimed at preventing vagrancy and destituteness to the dependents. The provisions of maintenance to the dependents has been carved out by way of Section 125 Cr.P.C. In Chapter IX of Cr.P.C. which pertains to the grant of maintenance to the wife, children and parents where eventualities are prescribed for maintenance of wife unable to maintain herself, legitimate or illegitimate minor children, whether married or not, unable to maintain themselves, legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself and further for parents who are unable to maintain and under which provision the definition of “minor” and “wife” are well given in the explanation to it. Section 126 of the Cr.P.C. provides procedure of such proceedings and Section of the 127 Cr.P.C. deals with alteration of allowances on proof of a change in the circumstances and lastly Section of the 128 of the Cr.P.C. deals with the enforcement of such an order of maintenance. Thus, from this all it is sufficiently clear that for the purpose of maintenance under Section 125 Cr.P.C. sufficient provisions have been enshrined in the Code of Criminal

Procedure itself. To the specific query of the Court, counsel for the petitioner could not convince how either the provisions of Order 7 Rule 11 C.P.C. or Section 10 and Section 151 C.P.C. were applicable to such proceedings. The arguments that have been raised by the learned counsel for the respondents on similar lines have challenged in the submissions. This device of the husband in having recourse to the provisions of Code of Civil Procedure certainly to the mind of this Court are not applicable in the present set of circumstances.

The court in the impugned order has rightly drawn the conclusion differentiating the provisions of Section 125 Cr.P.C. and the definition of the “suit” as enshrined in the Code of Civil Procedure as well as the fact that Section 10 CPC deals with the trial of suits, the present proceedings are under Section 125 Cr.P.C. by way of application for maintenance and cannot be termed to be a “suit” by any means even if it is loosely construed. This Court does not come across any illegality or perversity in the impugned findings which could necessitate intervention by this Court with the aid of exercise of its inherent powers under Section 482 Cr.P.C. The impugned orders certainly needs to be upheld. The petition is hopelessly without merits and stands dismissed.

December 19, 2018**'tiwana'****(Fateh Deep Singh)
Judge***Whether speaking/reasoned ?**Yes/No**Whether Reportable ?**Yes/No*