

In the High Court of Punjab and Haryana at Chandigarh

Crl. Misc. No. M-29546 of 2014

Date of Decision: 07.8.2018

Kulbir Singh and another

.....Petitioners

Versus

Harbilas

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Anter Preet Singh, Advocate
for the petitioners.

Mr. B.S.Jaswal, Advocate
for the respondent.

ANITA CHAUDHRY, J

Vide order dated 21.1.2014 (Annexure P-2) the petitioners have been directed to pay maintenance of Rs. 2,000/- to their father. Their revision has been also dismissed.

It would be necessary to give the facts.

Harbilas was married to Balbir Kaur. Three children were born out of the wedlock. Harbilas filed a petition under Section 125 Cr.P.C. in 2008 against his sons pleading that he had built a house on the plot but his wife fraudulently got the sale deed in her name. It was pleaded that he went abroad and had been sending money to the family and in all a sum of Rs. 6 lacs was sent and his wife did not give any account. When he returned and asked for his money, quarrels started and in August 2006, he was beaten and thrown out of the house by the respondents i.e. wife, two sons and a daughter. It was pleaded that he was earlier working as a carpenter which

involved physical labour but now he was unable to earn whereas his sons were major and were working, respondent No. 1-Kulbir Singh was a Salesman with M/s Raj Agencies and was getting Rs. 10,000/- per month and he used to earn Rs. 7,000/- per month from other vocations. It was pleaded that Kamaldeep Singh, his son was a property dealer and owned a gym in Model Town, Jalandhar. It was pleaded that the petitioner was unable to earn.

The respondents pleaded that the petition was a counter-blast to the petition filed by their mother under Section 125 Cr.P.C. It was pleaded that their father was hale and hearty and had independent source of income. It was pleaded that he had gone to Muscat and Dubai and had earned but he spent the entire money upon himself. It was denied that respondent No. 1 was a salesman. It was pleaded that one of them was a labourer and earned Rs. 2700/- per month and was maintaining his wife and was living separately from the mother. It was pleaded that their mother had purchased a plot from Baksho in 2006 and she had entered into an agreement 15 years ago and the funds for construction of the property were managed from the relatives.

Both the sides led evidence and the trial Court passed an order holding that the father was old and he could not be allowed to face starvation. It also noted that the petitioner had been unable to bring any evidence with respect to the income of the sons but holding them to be labourers, the sons were ordered to pay Rs. 2,000/- per month i.e. Rs. 1,000/- each as maintenance from the date of filing of petition.

Aggrieved by the order, revisions were preferred by the sons as well as by Harbilas which were dismissed.

I have heard both the sides.

Counsel for the petitioners submits that Kamaldeep Singh-petitioner No. 2 was residing with his brother Kulbir Singh and Kulbir Singh had taken a house on rent and a report from the police was called and is available on record wherein it was reported that Kamaldeep Singh was suffering from black jaundice (*kala piliya*) and was not doing any work and Kamaldeep Singh had no source of income and Kulbir was maintaining his brother and they were living in a rented accommodation. It was urged that it was also reported that Harbilas had taken forcible possession of the house and he was living alone in that house. It was urged that a civil suit was filed by the sons seeking injunction which was decreed and the appeal filed by Harbilas was dismissed and RSA No. 2494 of 2013 filed by Harbilas was dismissed in February 2014 and they were placing the copy of the judgment on record. It was urged that the petitioners' mother had filed a petition seeking maintenance in 2007 and as counter-blast their father had filed the petition under Section 125 Cr.P.C. in 2008 and Harbilas was working abroad and was not sending any money and he had been unable to prove before the Civil Court that he had purchased the property or had constructed it.

On the other hand the submission is that the respondent was old and he was about 65 years old now and was unable to earn and he was working abroad prior to 2001 and had been sending money to his family and with that amount the property was purchased but they got the sale deed executed in their own name. It was urged that since the father was old and infirm therefore, the Courts below had rightly allowed maintenance. It was urged that the respondent returned to India in 2001 and he had sent Rs. 6.00

lacs when he was abroad.

The trial Court had directed the sons to pay maintenance to the father. The Court noted that the sons were liable to maintain the parents who had ostensibly no means of livelihood and it was observed that the petitioner was old and could not do physical work therefore, the sons were bound to maintain him. The submission was that the father had been sending money and he was disease-ridden and could not do any physical work. Harbilas led no evidence to show that he was suffering from any disease. The trial Court accepted the oral statement and failed to consider the fact that the wife of Harbilas had filed a petition under Section 125 Cr.P.C. and maintenance was awarded to her in 2011. The onus was upon the petitioner and he was required to prove that he was suffering from any medical problem. He failed to lead any evidence. No medical record was produced. The Courts below were not justified in awarding maintenance to him. It is obvious that the petition had been filed by Harbilas to pressurize his family because his wife was seeking maintenance from him. The trial Court as well as the revisional Court had gone wrong in allowing maintenance to the respondent. The respondent had held back his record, his accounts. He led no evidence to prove that he had been sending money to his family or that the money was withdrawn by his wife to purchase the property. A suit had been instituted against Harbilas with respect to the property which was decreed in favour of the sons. A decree for injunction was passed. The appeals preferred by Harbilas have been dismissed. Even here the respondent could not place any document to show that he had purchased the property.

In the absence of any evidence regarding his medical condition,

maintenance could not have been allowed to him.

The petition is allowed. The orders passed by both the Courts below are set aside.

**(ANITA CHAUDHRY)
JUDGE**

August 07, 2018
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No