

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

Crl. Misc. M- 42568-2015 (O&M)
Date of Decision: 19th September, 2018

Massa Singh

...Petitioner

Versus

Narinder Kaur

.....Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- None for the petitioner.

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

JAISHREE THAKUR, J. (Oral)

This is a petition that has been filed under Section 482 Cr.P.C. seeking to quash/set aside the impugned order dated 06.10.2015 passed by Ld. Addl. Sessions Judge, Patiala and upheld the order dated 11.08.2015 passed by Sub. Divisional, Judicial Magistrate, Samana.

In brief, the facts of the case are that the petitioner filed an application under Section 125 Cr.P.C. seeking maintenance for himself and his minor grandson i.e. petitioner No.2 from his widow daughter-in-law. It was alleged that he had two sons namely Surjit Singh and Mukadar Singh. He got them educated and on completion of their studies, Surjit Singh got a

job in a private company in Bombay but died in 2011 and Mukadar Singh joined Border Security Force, who also died while fighting naxalites at Chattisgarh on 09.11.2011. Mukadar Singh was married to the respondent herein-Narinder Kaur, out of which wedlock, a son namely Daljit Singh was born on 25.12.2009. After the death of Mukadar Singh, all funds i.e. Insurance, provident fund, arrears etc. were received by the respondent and got deposited in the shape of an FDR, as well as the respondent was also receiving the pension from the BSF department. It was further averred that respondent had solemnized the second marriage with one Malkit Singh and started living with him and deserted both the petitioner and her minor child. It was also argued that having a meager pension and no independent source of income, the petitioner herein was not in a position to maintain himself and the minor grandson. It is also agreed that the petitioner had spent his entire money on the construction of a house with the hope that he would reside with his son and his family since his wife had died. The JMJC allowed the interim maintenance to the petitioner @ Rs. 5000/- per month leaving the quantum of maintenance for petitioner No.2. open.

In the revision the order was reversed holding that the father-in-law is not entitled to maintenance under the provisions of Section 125 Cr.P.C.

The only question that needs to be dealt herein is whether a father-in-law is entitled to maintenance at the hands of a widow daughter-in-law or not.

Provisions of Section 125 of the Cr.P.C. are as under:-

“Section 125 Cr.P.C.- “Order for maintenance of wives,

children and parents- (1) if any person having sufficient means neglects or refuses to maintain-

(a) his wife unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his 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 or,

(d) his father or mother, unable to maintain himself or herself,

A Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.”

On perusal of the provisions of Section 125 Cr.P.C, it has specifically been held that a person would be liable to maintain his father or mother, if said person is unable to maintain themselves. The term “Wife” has been described in the expansion to the said Section as well as the term 'Minor'. The term 'Minor' and 'Wife' have been enumerated to be such a person, as defined under the provisions of Indian Majority Act, whereas the term 'Wife' includes a woman who has been divorced by or has obtained a divorce from her husband and has not remarried. The term 'Mother' and 'Father' has to be understood as generally used meaning of the same. According to the Oxford Dictionary, the term 'Mother' means a female parent of a child or animal : a person who is acting as a mother to a child” whereas the term 'Father' according to the said Dictionary means a male parent of a child or animal: a person who is acting as a father of a child. A similar view has been expressed in Webster Dictionary as well.

Section 125 Cr.P.C., which has been enacted as a social enactment does not mention the term 'Father-In-law' or 'Mother-in-law'. The

legislature at that time could have also included the term 'Father -in-law' and 'Mother-in-law' while making sure that a person is to maintain his father, mother, wife and the minor children, who are unable to maintain themselves. But this has not been done.

It is well settled principle of law that when interpreting a particular legislation, the Court is not entitled to delete anything therefrom or to add something thereto. Such is the principle as laid down time and again and affirmed by the Hon'ble Supreme Court in **Union of India vs. Tulsiram Patel, AIR 1985 (SC) 1416.**

The judgment as relied upon by the petitioner at the time of notice of motion, in the case of **Bharti Mohunta Vs. Nara Hari Mohunta and Anr., 2011(99) AIC 791** is distinguishable and not applicable to the facts of the present case. The High Court at Orissa was dealing with an issue where the wife of the deceased had stepped into the shoes of a deceased husband and taken a job on compassionate basis and thereafter it was held that she was legally bound to maintain the opposite party, which is not the case in hand. The respondent herein has not taken a job on compassionate ground as has been noticed by the Revisional Court. The Revisional Court has decided only the interim maintenance.

Finding no infirmity in the orders, the petition stands dismissed and the matter is remanded back to the trial Court, with a direction to the trial Court to look into the custody of Daljit Singh and if the same is with the grandfather, the interim maintenance be decided expeditiously, leaving it open regarding the clause that the petitioner had spent his entire money on construction of the house, is a matter of evidence yet to be decided.

The petition stands disposed of

Let a copy of this order be sent to the trial Court.

September 19, 2018

seema

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No.