

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

CRM-M No. 478 of 2018

DATE OF DECISION :- September 04, 2018

Harish Kanda

...Petitioner

Versus

Pooja Kanda and another

...Respondents

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

Present:- Mr. .Munish Gupta, Advocate for the petitioner.

Dr. Anand Bishnoi, Advocate
with Ms. Shweta Nahata, Advocate for the respondents.

Pooja Kanda estranged wife and Lovish Kanda minor son of Harish Kanda had filed application under Section 125 Cr.P.C. against the latter which after contest was allowed by Judicial Magistrate Ist Class, Jalandhar vide order dated 9.3.2015 and respondent was directed to make payment of Rs.4500/- per month to applicant no.1 and Rs.3,000/- per month to applicant no. 2. In this order it was not mentioned as to from which date the order shall come into effect. The applicants as well as respondent had filed revision petitions against that order which were dismissed by Additional Sessions Judge, Kapurthala vide judgment dated 10.11.2017. The applicants had moved an application for modification and clarification of order dated 9.3.2015. Notice of that application was given to the respondent, who filed reply and thereafter the application was allowed by

Judicial Magistrate with the following observations :-

“Perusal of the case file show that the petitioners have filed the petition under section 125 Cr.P.C. for grant of maintenance from the respondent on 9.7.2013 and the petition was decided on 9.3.2015. It is relevant to mention here that vide order dated 10.1.2013 the interim maintenance application was allowed and the respondent was directed to make payment of Rs.5000/- per month to the petitioner no. 1 and Rs.2500/- per month to petitioner no. 2 from the date of filing of present application and the respondent was also directed to make the payment of Rs.4000/- as litigation expenses. No doubt, the final order is silent about enforceable date of the maintenance. But the respondent being husband of the petitioner no. 1 and father of respondent no. 2 is duty bound to maintain them from the date of application. Moreover, the interim relief of maintenance was granted to the petitioners from the date of application. It is worth mention here that the maintenance amount in the main order and interim order is same i.e. Rs.7500/- per month to the petitioners and if the final order is silent about the date of enforcement of the maintenance then it does not mean that the respondent is not liable to make the payment of maintenance from the date of application. Moreover, the interim order merged with the final order and the respondent is liable to make payment from the date of application. In view of the above discussion, the present application is allowed to the effect that the petitioners are entitled to maintenance from the date of application. Accordingly, these Misc. papers are disposed off and attached with the main file and consigned to record room.”

Respondent had challenged that order by way of filing a revision petition, before the Court of Sessions however he was unsuccessful there. Revision petition was dismissed vide order dated 10.11.2017. The

operative part of which is as under :-

“6. After considering the rival arguments to both the sides, I have gone through the impugned order, I do not find any illegality in the same. Para no. 4 of the order is important to be discussed. Learned trial Court has held that the petition under Section 125 of the Code of Criminal Procedure for grant of maintenance was filed on 9.7.2013 by wife and that petition was decided on 9.3.2015 and further vide order dated 10.1.2013 the interim maintenance application was allowed and respondent was directed to make the payment of amount of maintenance of Rs.5,000/- to petitioner no. 1 and Rs.2500/- per month to petitioner no. 2, from the date of filing of the application and respondent was also directed to pay Rs.4,000/- as litigation expenses.

Now bone of contention is that when Court has passed the final order dated 9.3.2015, which was silent about the date from which it was enforceable, then an application was moved by petitioner/wife to clear this aspect and it was ordered that it was enforceable from the date of application. That order was also challenged. Since while passing that order, an opportunity of hearing was not given to respondent/husband to present his case, then revisionist Court remanded back the matter to the learned trial court to decide the same after hearing both the sides and now after hearing both the sides, learned trial Court held that the order of maintenance passed by the Court is enforceable from the date of application and not from the date of order.

Reasoning given by learned trial Court that intention of the Court was to grant maintenance from the date of application can be inferred from this circumstance that when application for interim maintenance was disposed off, then at that time, maintenance was granted from the date of application.

Therefore, when application for maintenance was finally

disposed off, then it can be very well inferred that the intention of the court was to grant maintenance from the date of application and not from the date of order.

Moreover, this aspect is also to be considered that the object of provision under Section 125 of Code of Criminal Procedure is social one. Reliance in this regard can be placed upon Chaturbhuj Vs. Sita Bai, 2008(10 RCR (Criminal), 163 wherein it has been observed that Section 125 Code of Criminal Procedure is a measure of social justice and is specially enacted to protect woman and children”.

7. So in these circumstances, finding no merit in the present revision petition, the same stands dismissed. File of revision petition be consigned to the Record Room.”

Now he has approached this Court by way of filing the petition under Section 482 Cr.P.C., which is being resisted by the respondents.

I have heard learned counsel for the petitioner, learned counsel for the respondents besides going the record.

I find that this petition does not come within four corners of Section 482 Cr.P.C. so as to interfere with the orders passed by the Courts below. The petition being without merit stands dismissed.

(H.S. MADAAN)
JUDGE

September 04, 2018
p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No