

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

**CRM-M-49718-2017(O&M)
Date of decision:-2.8.2018**

Chand alias Raj Arora

...Petitioner

Versus

State of Haryana and others

...Respondents

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

Present : Mr.Vivek Goyal, Advocate
for the petitioner.

Ms.Aditi Girdhar, AAG, Haryana.

Mr.I.S. Pabla, Advocate with
Ms.Gurpreet Kaur, Advocate
for respondent No.2.

H.S. MADAAN, J.

By way of filing the present petition, the petitioner Chand alias Raj Arora seeks quashing of order dated 21.12.2016 vide which he had been proceeded against *ex parte* as well as *ex parte* judgment dated 13.6.2016 under Section 125 Cr.P.C. for the reason that he was not served in those proceedings.

Briefly stated, facts of the case are that applicant Gurpreet

Kaur, estranged wife and Baby Navya, aged about 5 years minor daughter of Chand alias Raj Arora had filed an application under Section 125 Cr.P.C. against him claiming monthly maintenance allowance. Notice of that application was given to respondent. Observing that he had not appeared despite service, the trial Magistrate directed that he be proceeded against *ex parte*. It was so done vide order dated 21.12.2016. After recording *ex parte* evidence, the application was allowed and maintenance @ Rs.3,000/- per month each were granted to applicants No.1 and 2 payable by respondent from the date of filing of the application. This judgment has left the respondent aggrieved and he has approached this Court.

Notice of the petition was issued to respondents, who put in appearance through counsel.

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

A perusal of the interim orders placed on record by the petitioner before this Court go to show that he was not personally served in the said case. His version is that he was not aware of the proceedings and had neither refused to accept service nor avoiding doing so. It is always desirable that a *lis* should be decided on merits, rather than condemning a person unheard. The present petitioner deserves to be given an opportunity of hearing and chance to present his view point in proceedings under Section 125 Cr.P.C. initiated by his estranged wife and minor daughter.

Therefore, the petition is accepted, the impugned order vide which he had been proceeded against *ex parte* as well as *ex parte*

judgment dated 13.6.2017 granting maintenance to the applicants are set aside, subject to payment of Rs.30,000/- as cost to Gurpreet Kaur and Baby Navya, respondents No.2 and 3 in the present case and applicants in application under Section 125 Cr.P.C. The parties are directed to appear before the Court of learned Additional Chief Judicial Magistrate, Kurukshetra on 17.8.2018. The trial Magistrate shall give an opportunity of filing written reply to respondent in the application and thereafter proceed to decide the application expeditiously preferably within six months from the date of receipt of copy of this Court in his Court.

2.8.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No