

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

CRM-M-54159-2018
Date of decision: 06.12.2018

Sheetal

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. P.P.S. Bajwa, Advocate,
for the petitioner.

JAISHREE THAKUR, J.

1. This is a petition that has been filed under Section 482 Cr.P.C. praying for quashing / setting aside the impugned order dated 19.07.2018 (Annexure P-4) passed by Sessions Judge, Narnaul in Criminal Revision No. 70 of 2017 against the order dated 10.08.2017 passed in Execution No. 28 dated 02.05.2017 by which the Criminal Revision filed by the petitioner has been dismissed.

2. To appreciate the controversy in the instant case, a few facts are to be noticed. The petitioner herein is the married daughter of respondent No.2, namely, Krishan alias Pappu. Initially an order of maintenance under Section 125 Cr.P.C. in Application No. 54-4 dated 02.09.2003 came to be decided on 24.03.2006 allowing maintenance to be paid to the applicants therein, namely, Smt. Pushpa Devi w/o Krishan Kumar, Shyam son of

Krishan Kumar of unsound mind and Sheetal daughter of Krishan Kumar whereby the respondent Krishan Kumar was directed to pay ₹ 1,000/- each to the applicants. Thereafter, an application under section 127 Cr.P.C was instituted on 25.01.2014/16.08.2016 by Smt. Pushpa Devi and Shyam Sunder, which was registered as Application No. 32 RT of 2014 seeking enhancement of maintenance on the ground that there has been an inflation and an amount of ₹ 1,000/- per month each were insufficient. It was contended that the respondent while working as a Mechanic in Haryana Roadways was receiving a sum of ₹ 40/50,000/- per month. The matter was contested. In the reply filed, it was stated that an amount of ₹ 3,000/- p.m. was being paid regularly in the account of Smt. Pushpa Devi (towards maintenance of Pushpa Devi, minor son and Sheetal) and in fact excess amount had been paid since the daughter of the applicant, the petitioner herein had got married with Karan Singh on 24.05.2010 and being a married daughter, she would not be entitled to claim any maintenance therein @ ₹ 1,000/- per month after her marriage had been solemnized. The Sub Divisional Judicial Magistrate after considering the evidence on the record enhanced the maintenance amount and directed the respondent Krishan Kumar to pay ₹ 3,000/- to Pushpa Devi - applicant No.1 and ₹ 3,000/- per month to Shyam Sunder - applicant No.2 from the date of filing of the application while further directing that the amount of maintenance paid to the applicant in the last preceding three years shall be set off. Seeking maintenance in terms of the order dated 16.01.2017, execution proceedings were initiated by Pushpa Devi i.e. Execution Petition No. 28 of 2017, which

was again contested. In the objection petition, a plea was taken by Krishan Kumar that excess payment had been made against the initial order as he had continued to pay ₹ 1,000/- per month (towards Sheetal's) maintenance even after her marriage and that that should be set off against any arrears of maintenance found due and payable. The objections were decided allowing the plea of the judgment debtor Krishan Kumar, holding that as per provisions of Section 125 Cr.P.C. only unmarried daughter could claim maintenance from her father. The Court also took judicial note of the fact that Sheetal was married and she became major before filing of the application for enhancement of maintenance. In this background, the Executing Court while deciding the objections held that the amount paid by the judgment debtor Krishan Kumar to Sheetal, his married daughter would also liable to be settled towards the enhanced amount of maintenance. Thereafter, the salary account of the Judgment debtor came to be attached towards recovery of the arrears of maintenance. Aggrieved against the said order dated 10.07.2018, Sheetal, the married daughter of DH, filed a revision before the Sessions Judge, Narnaul claiming that the maintenance amount that was made payable to by the original order dated 24.03.2006, has been stopped and she is entitled to the same, which revision petition came to be dismissed. Aggrieved against the dismissal, the instant petition has been filed.

3. Learned counsel for the petitioner herein contends that petitioner herein is the daughter of the DH Krishan Kumar-respondent No.1 in the instant petition, and is separated from her husband and, thus, would

be entitled to claim maintenance from her father. It is also argued that she was not party in the execution proceedings and, therefore, Executing Court passed the order against her without giving her an opportunity of being heard.

4. I have heard learned counsel for the petitioner and have also perused the pleadings on the record.

5. The Courts below, in order dated 10.08.2017 as well as the impugned order dated 19.07.2018 correctly noticed the fact that Sheetal, the petitioner herein was married and major and would not be entitled to maintenance @ ₹ 1,000/- per month from her father. It was also noticed that amount of ₹ 3,000/- per month was being paid by the DH directly to Pushpa Devi and the said payment was continued even after she had solemnized a marriage as far back as 2010. Taking note of the fact that Sheetal, the petitioner herein would not be entitled to the amount after her marriage, had ordered setting off against the amount received by the applicant Pushpa Devi.

6. This Court finds no infirmity in the said order. The contention as raised by learned counsel for the petitioner that the petitioner is entitled to be maintained on account of the fact that her marriage has failed and she is not getting maintenance from her husband, is an argument which is rejected being devoid of any merit. Under Section 125 Cr.P.C. it is only an unmarried minor daughter who is entitled to claim maintenance, whereas the petitioner herein is major/ married, even though, the marriage might be in troubled waters. The contention raised that she should have been given an

opportunity of hearing, is again an argument that is not sustainable since it is Pushpa Devi who had been receiving the amount from JD directly for all three and and there is nothing on record to substantiate that the said amount was handed over to Sheetal for her exclusive use and consumption. Therefore, finding no infirmity in the order, the instant petition stands dismissed.

06.12.2018

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.