

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

CRM-M-6578-2018

Date of decision: 16.02.2018

Bhupinder Singh

...Petitioner

Versus

Ravinder Kaur

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Peeush Gagneja, Advocate,
for the petitioner.

JAISHREE THAKUR, J.

1. This is a petition that has been filed under Section 482 of the Code of Criminal Procedure seeking to set aside the impugned order dated 09.01.2018 (Annexure P-7) whereby defence of the petitioner herein has been struck off in Petition No. MNT125/33 of 01.05.2017 filed for grant of maintenance under Section 125 Cr.P.C. titled as “Ravinder Kaur vs. Bhupinder Singh” pending in the Court of Ms. Vipindeep Kaur, Chief Judicial Magistrate, Mohali.

2. In brief, the facts are that the respondent/wife filed a petition under Section 125 Cr.P.C. for grant of maintenance against the petitioner herein before the learned trial Court. The petitioner is serving in the Excise & Taxation Department, Kapurthala as Excise and Taxation Inspector, however, he could not be served through ordinary way of service, so he was ordered to be summoned through his Office Head by the Chief Judicial Magistrate, Mohali. Despite service, petitioner could not be served through

ordinary manner and by order dated 18.08.2017, it was ordered that the petitioner/respondent in the application seeking maintenance be served for 20.09.2017 through publication in daily newspaper "Dainik Bhaskar". Despite service, the petitioner did not put in appearance on the date fixed and he was proceeded against ex parte vide order dated 20.09.2017 and case was adjourned to 18.10.2017 for ex parte evidence of the petitioner. On which date, the matter was not taken up as 18.10.2017 was declared a holiday and the same was taken up on 21.10.2017 by the Duty Magistrate as the Presiding Officer was on leave on that day and the matter was posted for 22.11.2017. The petitioner eventually put in appearance on 22.11.2017 and moved an application to have the ex parte order set aside and the case was adjourned to 11.12.2017 for filing reply to the said application. On 11.12.2017, counsel for the respondent-wife suffered a statement that he would have no objection if the said application is allowed and the ex parte order dated 20.09.2017 is set aside. In view of this, the petitioner herein was directed to deposit costs of ₹ 5,000/- on account of publication expenses and one opportunity was given to him to file reply. The matter was adjourned to 09.01.2018, on which date the petitioner herein did not put in appearance nor were the costs deposited as a result the impugned order dated 09.01.2018 came to be passed striking off the defence of the petitioner.

3. Learned counsel for the petitioner herein argues that the impugned order striking off the defence is not sustainable on account of the fact that these are the proceedings which have been initiated under Criminal Law and there is no such provision for striking off the defence. In this regard, he places reliance upon a judgment rendered by this Court in

Gurvinder Singh vs. Murti and Ors. in ***Criminal Misc. No. 3989-M of 1989*** in which it has been held that the provisions under Order 11 Rule 21 of the Code of Civil Procedure which allows defence of a party to be struck off, or, inherent power of a Civil Court in this regard, would not be applicable to the cases for grant, or, recovery of maintenance under Section 125 of the Code.

4. I have heard learned counsel for the petitioner and propose to dispose of this petition in limine without issuing notice to the other party.

5. The sole question that arises for consideration is as to whether defence of the petitioner could have been struck off in proceedings initiated under Section 125 Cr.P.C. for grant of interim maintenance.

6. The judgment rendered in ***Gurvinder Singh's*** case (supra) is fully applicable to the facts of the case in hand. Subsequent to the judgment rendered in ***Gurvinder Singh's*** case (supra), the High Court of Kerala at Enrakulam in ***Sakeer Hussain T.P. vs. Naseera and Ors., ILR 2016(4) Kerala 917*** was seized of a similar matter, where an application under Section 125 Cr.P.C. seeking maintenance had been filed by the wife. During the pendency of the said petition, interim maintenance had been allowed by the Family Court, which order was not complied with. Since interim maintenance had not been paid, the Family Court struck off the defence of the respondents, which order was challenged before the High Court. On consideration of various case laws relied upon along with the judgment rendered by the Hon'ble Supreme Court in ***Savitri vs. Govind Singh Rawat (1984) 4 SCC 337***, it was held that the object of the statute was to compel a man to perform the moral obligation which he owed to Society in respect of

his wife and children to ensure that they are not driven to a life of destitute, while further holding that power to strike off defence does not exist, either by specific statutory provision or by necessary implication.

7. In the instant case, the defence of the petitioner stands struck off by the Family Court in proceedings initiated under Section 125Cr.P.C. which order is clearly not sustainable in view of the fact that the provisions under the Code of Civil Procedure would not be applicable. Therefore, this Court has no hesitation in interfering in the impugned order at the very outset without issuing notice.

8. This Court is informed that the matter is listed before the Family Court on 13.03.2018 for further proceedings under the application filed under Section 125 Cr.P.C. The impugned order being clearly unjustifiable is hereby set aside giving the petitioner herein one opportunity to put in an appearance on that date and file his reply to the said petition along with the reply to the application for grant of interim maintenance, if any. However, this is subject to cost of ₹ 10,000/- being paid to the respondent-wife towards publication charges as assessed by the Family Court and towards harassment and unnecessary delay in the matter.

8. Petition stands disposed of accordingly.

16.02.2018

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes.

Whether reportable

No.