

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

Crl. Misc. No.M-7857 of 2018

Date of decision : 03.08.2018

Sunil Kumar

.....Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. R.K. Bajaj, Advocate
for the petitioner.

Mr. Ajay Pal Singh, DAG, Punjab.

Mr. Pranav Handa, Advocate
for respondent no.2.

ANITA CHAUDHRY, J(ORAL)

This is a petition seeking quashing of the order dated 25.01.2018 and the order dated 27.04.2017 passed by the Additional Sessions Judge and the Magistrate respectively awarding Rs.3,000/- per month as interim maintenance.

The counsel for the petitioner had pointed out that the wife had left the matrimonial home without any reason and the marriage was not consummated and she had made a statement in this regard that she did not want to go to the matrimonial home and he had referred to the statement Annexure P-5, which was said to have been signed by her father as well and was verified by a police officer. The counsel had also pointed out that the Assistant Commissioner of Police had made its report and had recommended that the complaint be filed. It had been stated that on that report the complaint was ordered to be filed.

Notice of the petition had been given to the respondent and respondent no.2 was asked to place on record the statement given by respondent no.2 before the Court below. It was revealed that she has not yet made her statement and therefore, the trial Court was directed to record her statement. The statement has been recorded and a copy of it has been produced.

The parties have also placed on record the copy of the petition filed under Section 125 Cr.P.C. as well as the statement given by Vashisht Rai.

Counsel for the petitioner contends that where the wife leaves the matrimonial home without a sufficient cause then she is not entitled to any maintenance and in this case the girl had left the matrimonial home within three days and in the statement given to the police on 02.09.2016, she had stated that she had not made any relation with her husband and that she had refused him on the very first night and she did not want to live in the matrimonial home and she wanted a divorce from the husband and would file a case regarding demand of dowry. Counsel had referred to Annexure P-5 and to the report made subsequently by the Senior Officers Annexure P-3. The counsel for the petitioner further referred to the order passed by the Magistrate and to para 3 where the submissions made by them were noted and it was urged that this fact was argued before the Court below and they had referred to the statement made before the Women Cell which was ignored by both the Courts below.

On the other hand, the submission on behalf of the private respondent had denied making any statement before the Women Cell and she came to know of this only when the notice was received and this fact was

disclosed in her statement given in the petition filed under Section 125 Cr.P.C. The counsel refers to the statement which reads as under:-

“I came to know that Ex. R1 has been falsely prepared and produced in the Hon'ble High Court which does not bear my signature when I got the summons from the Hon'ble High Court along with the petition and document. It is wrong to suggest that it was already in my knowledge regarding Ex. R1. It is further to suggest that the respondent has tendered the copy of R1 during the proceedings under Section 125 Cr.P.C. It is correct that the cross-examination dated 21.09.2017 bears the signature of my father which was statement in the court during cross-examination Vol. But there was objection as my counsel was not present in the court when the cross-examination of my father was being conducted and we requested to wait for our counsel for sometime but the counsel for the respondent continue dictating the cross-examination. I do not remember whether copy of statement along with police report was handed over to me along application for cancellation of the order dated 27.04.2017 filed on 28.09.2017 vol. I came to know regarding the document Ex. R1 which is false document when I got the summons from the Hon'ble High Court along with the documents.”

Continuing with the arguments, it was urged that respondent no.2 had denied making any statement to the police and the girl had left the matrimonial home in May 2016.

According to the petitioner, his wife had remained in the matrimonial home only for three days. The counsel had referred to the statement which was given before the Women Cell. Respondent no.2 has denied making any statement to the police. It is not the first time that this issue was raised. The counsel representing the petitioner before the Court below had precisely raised this argument which is noted in para 3 of the order passed by the Magistrate and it notices the submission. It also refers to the facts that respondent no.2 has placed the photocopy of the statement given before the Women Cell and the report of the Women Cell. It cannot, therefore, be said that the documents came to the notice of respondent no.2 for the first time. In the light of this since it is yet to be adjudicated whether respondent no.2 had left the matrimonial home of her own or was thrown out and whether the marriage was consummated, therefore, the impugned orders are set aside. The petition is allowed.

However, it is clarified that nothing contained herein would have a bearing on the orders which may finally be passed by the Court below, on the basis of evidence which the parties may wish to lead.

03.08.2018

sunil

**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No