

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

CRM M-1691 of 2018

Date of Decision: August 28, 2019

Rahul Gautam

.....Petitioner

Versus

Poonam Rani

.... Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Chanderhass Yadav, Advocate
for the petitioner.

Mr. Himanshu Rao, Advocate
for the respondent.

FATEH DEEP SINGH, J. (Oral)

Petitioner Rahul Gautam has come up in this petition under Section 482 Cr.P.C. against the respondent wife Poonam Rani seeking quashment/setting aside of an application under Section 125 Cr.P.C. seeking maintenance filed by the wife against the husband and consequent

thereupon orders of learned JMJC Rewari dated 24.05.2016 (Annexure P-9) and order passed by the reversional Court of learned Additional Sessions Judge, Rewari dated 28.11.2016 (Annexure P-12), which went against the husband, and by virtue of which, the wife was awarded interim maintenance against the husband to the tune of Rs.5000/- per month from the date of the order and which finding remained intact throughout.

Shri Chanderhas Yadav, learned counsel for the petitioner has drawn the attention of the Court towards the maintenance application dated 05.08.2015 of the wife whereby she has sought maintenance and the Court has awarded maintenance beyond that period and further contended that the impugned order of learned JMJC dated 24th May 2016 is unsustainable as the wife at time was living in adultery.

The arguments of the counsel for the petitioner

has sought to be dispelled by Mr. Himanshu Rao, Advocate for the respondent arguing that even if the wife had managed to obtain a decree of divorce she is entitled to maintenance allowance although even her criminal case under the criminal breach of trust qua her *Istridhan* and cruelty to her stood dismissed by the Courts and that even a mere passing of decree under Section 9 of the Hindu Marriage Act, the Court cannot deny the maintenance to the wife.

Going through the submissions, it is duly conceded at the bar by the counsel for the two sides that there has been multiple litigation between the couple, the wife has managed to lodge an FIR bearing No. 276 dated 26.08.2012 under Sections 498-A, 406 and 34 IPC, Police Station City Rewari and which case went against the wife, whereby, the accused stood acquitted through the judgment and order dated 17.08.2017 and which order since then has

attained finality and could not be displaced by the any of the sides. Furthermore, as is there the wife filed a petition dated 13.01.2014 under Section 13 of the Hindu Marriage Act seeking divorce, which was granted vide judgment and order dated 17.12.2014 and which as is there still holds good besides the fact that even the proceedings under the Domestic Violence Act have ensued between the parties but counsel for the petitioner could not convince this Court if the proceedings can come in the way of the wife to seek maintenance allowance. No doubt, the wife in her application for maintenance has claimed that she was entitled for maintenance of Rs.30,000/- from the husband/respondent from the date of her desertion till 17.12.2014, i.e. the day of divorce, she had as is there on the records instituted the application for maintenance on 05.08.2015 and therefore by all means the wife cannot claim maintenance for the period prior to the application

under Section 125 Cr.P.C. As is there in the orders of learned Judicial Magistrate 1st Class dated 24.05.2016, the Court had allowed the application for interim maintenance holding that the wife is entitled to interim maintenance at the rate of Rs.5000/- per month from the date of the order, i.e. 24.05.2016 and that in the revision of the husband, the Court of learned Additional Sessions Judge has held that since husband was shirking from his obligation to make payment of interim maintenance had ordered the husband to deposit interim maintenance arrears in accordance with law vide orders dated 24.05.2016 so passed by the learned Magistrate. From this, it is emphatically clear that the Court below had allowed interim maintenance of Rs.5,000/- per month from the date of the order, i.e. 24.05.2016 and, therefore, these arguments so advanced by the counsel for the petitioner does not carry the day for him. It is this order which is under challenge and whatever is pleaded in the

application under Section 125 Cr.P.C., pales into insignificance at this juncture even otherwise as is there in the records earlier the husband had moved an application qua dismissal of the main application under Section 125 Cr.P.C. of the wife on the grounds that since the wife's maintenance allowance is due only upto 17.12.2014 and as such same was not permissible being constrained by period of limitation and which stood dismissed by the Court concerned.

The claim of the husband that he has managed to procure a decree for restitution of conjugal rights by invoking provisions of Section 9 of the Hindu Marriage Act does not come to his aid. It is upon execution of the said decree in case of non-compliance the wife may be penalized in terms of Order 21 Rule 32 C.P.C.

In the light what has been detailed and discussed above, apparently there is no merit in the petition

and rather the impugned orders are legally firm and correct

and need to be upheld.

The petition stands dismissed.

August 28, 2019
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No