

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No. M-16388 of 2015 (O&M)
Date of decision : October 31, 2019

Ramesh Kumar

....Petitioner

versus

Sushma and another

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Sandeep Sharma, Advocate, for the petitioner

Mr. BD Sharma, Advocate, for the respondents

Fateh Deep Singh, J. (Oral)

Sushma and her minor son Reshap filed against respondent Ramesh Kumar an application under Section 125 of the Code of Criminal Procedure (in short, Cr.P.C.) seeking maintenance allowance. The court of learned Judicial Magistrate Ist Class, Kurukshetra vide orders dated 20.4.2011 disposed off the said application directing Ramesh Kumar respondent to pay to petitioner Reshap a sum of Rs 1500/- per month till he attained majority whereas claim of petitioner no. 1-wife was declined. The wife and

the child against the said order filed a revision and the court of learned Additional Sessions Judge, Kurukshetra vide impugned judgment dated 14.10.2013 allowing the revision modified the orders of learned Judicial Magistrate Ist Class, thereby allowing Rs 2500/- per month to the wife and Rs 5000/- per month to the child and disposed off the petition. The same is subject matter of challenge before this Court by the aggrieved husband petitioner Ramesh Kumar who has filed this petition under Section 482 Cr.P.C.

Heard Mr. Sandeep Sharma, Advocate, for the petitioner; Mr. BD Sharma, Advocate, for the respondents and perused the records.

It is by no means differed that marriage between the couple took place on 28.11.2001, out of which Reshap, minor petitioner was born to the couple. It is during the course of matrimony, a dispute arose between the couple and thereafter an agreement dated 6.10.2005 was executed between the husband and the wife and as a consequence of which they filed a petition under Section 13-B of the Hindu Marriage Act seeking dissolution of their marriage by decree of divorce through mutual consent. The same stood allowed by the court of learned District Judge, Kurukshetra vide judgment dated 8.5.2006. The primary concern of

learned counsel for the petitioner-husband is that during the course of proceedings for dissolution of the marriage, the husband has paid a lump-sum amount of Rs 2,50,000/- to the wife who has undertaken that she will not lay any claim from the respondent by way of maintenance or expenses. However, during the course of trial of the proceedings in an application under Section 125 Cr.P.C. the husband did not appear and was proceeded against ex-parte on 13.11.2009. The wife in her evidence examined herself as PW1 and Banarsi Dass as PW2 and after tendering copy of judgment and decree Ex. P/1 and Ex. P2 she closed her evidence leading to the passing of the ex-parte orders by the learned Judicial Magistrate. The husband was proceeded ex-parte vide orders dated 9.10.2013 even by the revisional court against whose judgment he has come up before this Court in this petition.

Appreciating the submissions, the first and foremost point that arises, the petitioner initially having appeared before the Judicial Magistrate absented and did not bother to put in appearance leading to the passing of the ex-parte order. Even in the revision petition of the wife and the minor child, the husband was proceeded ex-parte and the impugned findings had come about. To the specific query of the Court, the learned counsel for the petitioner

does not claims that they had moved the court to set aside the ex-parte findings which are subject matter of challenge in this petition under Section 482 Cr.P.C. and therefore, puts to knots the right of the petitioner-husband to challenge this order before this Court. Further-more counsel for the petitioner could not convince this Court or controvert the submissions of the counsel for the respondents that nothing is proved on the record to show to the court that the wife was paid lump-sum amount as maintenance or permanent alimony nor any such document has been proved on the record that the wife had made statement to that effect. More-so proceedings under Section 125 Cr.P.C. are separate and distinct from the proceedings under Section 13-B of the Hindu Marriage Act, 1955 unless and until such an evidence is brought on the records, the court cannot take cognizance without having before it legal piece of evidence to establish that stand of the husband. Besides the fact that it is well settled preposition of law that an evidence recorded in another case cannot be suo-moto taken to be legal piece of evidence in another case without due proof of the same. Thus, it would be preposterous preposition of law to accept the arguments of the counsel for the petitioner that the wife is not entitled to any maintenance. More-so, the Hon'ble Apex Court in **Vanamala vs**

H.M.Ranganatha Bhatta, 1995(3) R.C.R. (Criminal) 210 while dealing with a similar preposition whereby the Court has held that even if the wife is living separately after obtaining decree of divorce by mutual consent, she is entitled to seek maintenance. In the absence of any such evidence brought about by the husband to controvert the claim of the wife, this Court is not inclined to accept the arguments that have sought to be put forth before this Court on behalf of the petitioner. Admittedly, the husband was running business and the wife does not have any income and has to maintain her minor child who is living with her. Keeping in view the present trend of rising prices, the Court below has rightly taken note of the fact and come to a justified conclusion which does not calls for any interference. Counsel for the petitioner could not convince how there has been miscarriage of justice necessitating exercise of inherent powers of this Court. The Court is not inclined to interfere and thus, the present petition stands dismissed.

October 31, 2019

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**(Fateh Deep Singh)
Judge**

Whether speaking/reasoned ?

Yes/No

Whether Reportable ?

Yes/No