

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-18587 of 2017

Date of Decision: 16.01.2019

Rajwinder Singh

...Petitioner(s)

Versus

Gurmeet Kaur & another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. N.S. Swaitch, Advocate
for the petitioner.

Mr. Madhur Goyal, Advocate
for respondents.

HARI PAL VERMA, J. (Oral)

Petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 for setting aside the order dated 06.12.2016 (Annexure P-5) passed by learned Additional Sessions Judge, Sangrur, whereby, the petition filed by respondent no.1 under Section 125 CrPC was accepted and the petitioner-husband was directed to pay interim maintenance of Rs.2,000/- per month to each of the respondent-claimants. The claimants are wife and her minor daughter Kushpreet Kaur.

Learned counsel for the petitioner has argued that respondent no.1 is not entitled to claim any maintenance, as she has not only left her matrimonial home voluntarily, rather she is living in adultery with one

Gurpreet Singh @ Raju. He has referred to Section 125(4) CrPC to contend that once the respondent-wife is living in adultery, she cannot claim maintenance under Section 125 CrPC.

I have heard learned counsel for the parties.

Section 125(4) in the Code Of Criminal Procedure, 1973 reads as under:-

“(4) No Wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.”

The petitioner-husband has approached this Court challenging the order whereby interim maintenance has been awarded to the respondents by the Courts below. It is during the course of trial, the factum of adultery is to be established by leading cogent and reliable evidence. In the case of **Kasturi Vs. Ramaswamy, 1979 Cri.LJ 741**, Madras High Court has held that “living in adultery” in section 125(4) of the Code of Criminal Procedure means outright adulterous conduct on the part of the wife. It has been explained that stray act to illicit intercourse will not amount to “living in adultery”. This Court in the case of **Des Raj Vs. Meena Rani 1996(2) RCR (Criminal) 632** has held that the liability to maintain wife arises from the very existence of marriage. The observations made by this Court in the case read as under:-

“6. If the wife was really living in adultery, the husband could institute complaint against her paramour under Section 497 of the Indian Penal Code. Husband could claim divorce on the ground that wife was living in adultery. Husband is bound to maintain his wife. Liability to maintain wife arises from the

very existence of marriage. If the wife is not faithful to the marriage bed or if the wife without sufficient reasons refuses to co-habit with the husband, husband has remedy under the law to seek matrimonial relief against her. There is no evidence that the wife has the means to maintain herself by her own earnings or that she really earns. Husband is on the other hand stated to be running tailoring business. In these days, when the prices of essentials of life are going up almost daily, I do not think maintenance to the tune of Rs. 400/- per month is on the higher side. Wife has prayed for the grant of litigation expenses, so far as this Court is concerned. Litigation expenses to the tune of Rs. 1,000/- are awarded to the wife incurred by her in this Court.

Thus, proceedings under Section 125 CrPC are summary in nature and the order does not determine rights of the parties as held by Hon'ble the Apex Court in the case of **Dwarika Prasad Satpathy Vs. Bidyut prava Dixit and another, AIR 1999 SC 3348**, wherein it was observed as under:-

“It is to be remembered that the order passed in an application under Section 125 Cr.P.C. does not finally determine the rights and obligations of the parties and the said section is enacted with a view to provide summary remedy for providing maintenance to a wife, children and parents. For the purpose of getting his rights determined, the appellant has also filed a Civil Suit, which is pending before the trial court. In such a situation, this Court in S. Sethurathinam Pillai v. Barbara alias Dolly Sethurthinam, {1971 (3) SCC 923} observed that maintenance under Section 488 Cr.P.C., 1898 (Similar to Section 125 Cr.P.C.) cannot be denied where there was some evidence on which conclusion for grant of maintenance could be reached. It was held that

order passed under Section 488 is a summary order which does not finally determine the rights and obligations of the parties; the decision of the criminal court that there was a valid marriage between the parties will not operate as decisive in any civil proceeding between the parties.”

Accordingly, this Court finds that the impugned order (Annexure P-5) relates to interim maintenance granted by the Court below and the factum of adultery is yet to be proved during the course of trial.

Therefore, no case for interference is made out.

Dismissed.

However, observations made hereinabove shall not construe any expression on the merits of the main case.

January 16, 2019
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No