

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No. M-36436 of 2009 (O&M)
Date of decision : February 13, 2019

Bibi Fatima

....Petitioner

versus

State of Haryana and another

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Ravindra Jain, Advocate, for the petitioner

Mr. Ripu Daman Singh, AAG, Haryana for the
State/respondent no. 1

Mr. Krishan Singh, Advocate, for respondent no. 2

Fateh Deep Singh, J. (Oral)

The present petitioner Bibi Fatima initially invoked the jurisdiction of learned Judicial Magistrate Ist Class, Yamuna Nagar along with her minor son Mohammad Ali (since deceased) and instituted against the respondent-husband Safi Mohammad, an application under Section 125 of the Code of Criminal Procedure (in short, Cr.P.C.) seeking maintenance for herself as well as her minor

child.

The brief grounds that have been canvassed by the applicants are that applicant-Bibi Fatima and respondent-husband Safi Mohammad have undergone marriage and were husband and wife, out of which applicant no. 2-Mohammad Ali was born and she did not own any immovable property nor had any income and thus, respondent-husband having sufficient income was under legal obligation to support her and rather the husband has thrown them out of the matrimonial home.

The respondent in his stand taken in the written reply denied the allegations of the applicant that he ever ill-treated the wife or demanded anything and had termed the allegations that the husband was forcing her into flesh trade and has shown his resolve to take her back but alleged that she was leading an adulterous life with one Rattna Saini and that she was not entitled to any maintenance.

The applicant examined AW1 Moldeen, AW2 Mehardeen and thereafter applicant testified herself as AW3. The respondent examined RW1 Aldiya and thereafter husband has appeared as RW2 and examined RW3 Valideen and RW4 Khursid.

The court of learned Judicial Magistrate Ist Class, Yamunanagar vide order dated 22.9.2007 dismissed the application

of the wife. The same was challenged by the un-successful wife by way of revision and the court of learned Additional Sessions Judge, Yamunanagar at Jagadhri through impugned findings dated 17.1.2009 dismissed the revision as well. It is against these consecutive findings, the present invocation under Section 482 Cr.P.C. has come about seeking exercise of inherent powers by this Court.

Heard Mr. Ravindra Jain, Advocate, for the petitioner; Mr. Ripu Daman Singh, AAG, Haryana for the State/respondent no. 1; Mr. Krishan Singh, Advocate, for respondent no. 2 and perused the records.

It is duly accepted by the two sides that provisions of Section 125 Cr.P.C. are by way of social legislation for the upkeep and maintenance of the destitute dependents who do not have any source of sustenance. At the same time being proceedings summary in nature stricter principles of Evidence Act do not apply to it. Reverting back to the present case, respondent Safi Mohammad admits the relationship between the applicant Bibi Fatima and him that to be of husband and wife out of which a child was born to them. The husband in his reply had shown his inclination to take back the wife though alleged that she was living in an adulterous relationship with one Rattna Saini.

Mr. Krishan Singh, learned counsel for respondent no. 2 had made multifarious attack on the case of the petitioner by placing reliance on **Dharmender vs State of Haryana and others, 2010(2) R.C.R. (Criminal) 414; Ms. Suresh Khullar vs Vijay Khullar, 2002 (4) R.C.R. (Civil) 676; Navdeep Kaur vs Dilraj Singh, 2003(1) R.C.R. (Civil) 365; Shiv Kumar vs Baby Sonam 2004(3) R.C.R. (Criminal) 483 and Y. Mangatayaru vs Y. Seshavataram & another, 1989(1) HLR 601** arguing that there is specific bar under the Cr.P.C. for second revision and by invoking the jurisdiction of this Court by virtue of Section 482 Cr.P.C. the petitioner is trying to avail of virtually a second revision which is not permissible and has sought to argue that it is the admission by the wife that she was earlier married and subsequently had contracted the second marriage with the petitioner and therefore, the same is rendered *non-est* for which the wife cannot claim any maintenance being null and void *abinitio* marriage by virtue of Section 5 of the Hindu Marriage Act, 1955 and that the adulterous relationship of the wife dis-entitles her to any relief. The same has sought to be refuted with much force and vehemence by Mr. Ravinder Jain, counsel for the petitioner arguing that there is no evidence worth the name to show that the wife was living in adultery and mere residing at the house of some one does

not implies that she was leading an adulterous relationship. It is vehemently submitted that the claim of the husband that he is ready and willing to take the wife is itself illustrative that there was no such element of adulterous life by the wife and rather such an act completely condones the case of the wife.

Appreciating the submissions it is by no means put to dispute as to the relationship of husband and wife between Bibi Fatima and Safi Mohammad. The only semblance of evidence on which the counsel for the respondent has sought to harbour is the admission of the wife in her cross-examination that she was living with Rattna Saini and the very pleadings set up by the husband and his suggestion put at the time of cross-examination of AW3 Bibi Fatima are contrary. In his pleadings the husband accepts his relationship with the applicant-wife and has shown his willingness to take her back but while putting to cross-examination, the wife had sought to deny such a relationship and therefore, to the mind of this Court, the husband cannot be allowed to take any undue benefit of his own wrong by virtue of raking up these self-contradictory stands and rather in his deposition husband as RW2 states that she is residing voluntarily at the house of Rattna Saini and that he was still ready and willing to keep her back and was ready to provide her with clothing, food and expenses. Thus, from this one cannot accept the

plea as has sought to be put forth by the counsel for respondent no. 2 that the wife was living an adulterous relationship. More-so as is there in the evidence wife is a destitute from Bengal and has no property or anyone to look after her and thus has to take shelter with some who could show humanity. Mere residing at the house of someone does not establishes and proves that she was leading an adulterous life. It needs to be kept in mind that under the provisions of Section 125 Cr.P.C. it is the primary concept that the husband owes a liability to maintain the wife and as a reciprocal to it the wife is under liability to lead a virtuous and loyal life towards the husband. It is the categoric stand of the wife that the husband often physically and mentally tortured her and had given her beatings and was forcing her to lead an adulterous life by accepting his wishes of carrying on flesh trade to which she has objected. It needs to be kept in mind that where the husband takes a stand that the wife is living in adultery, it is for the husband to begin his case and led in evidence of unchastity and it is not the wife to begin her case. Reliance placed on **Kista Pillai v. Anurthammal, AIR 1938 Mad. 833** and **Subbayamrna v. Venkata Rao, Sri M.Y.K. Rayudu, AIR 1954 Mad. 90** wherein too it was observed by their Lordships that where the husband takes such a plea to deny claim for maintenance it is for the husband to begin his case and the wife ought to have an opportunity

of adducing rebutting evidence to it and by not following such a procedure is certainly to the prejudice of the wife. In the present case the husband has not led any independent evidence that the wife at the time of filing of the application and during the continuation of the same has knowingly refused to live with the husband or was leading an adulterous life. Thus, from this it is apparently borne out that blatantly the husband has levelled false allegations of adultery so as to escape his obligation of paying maintenance to the wife. In the present case as has been laid down in **Paras Ram vs Kamlesh, 1982 AIR (Punjab) 60**, a Division Bench view of this Court has held that where allegations of adultery are levelled by the respondent-husband, he is under obligation to lead evidence first to support his contention and must ensure that his defence either succeeds or fails and in the present case the husband had led evidence much afterwards the evidence of the wife and the allegations of adultery have not been established to the hilt and therefore, the stand of the husband that the wife is leading an adulterous life is not fully established to the hilt. It is the own stand of the husband that the minor applicant happens to be his son born out of this wedlock and leading of life of adultery by the wife has not been established by any cogent and impeccable evidence. The courts below failed to keep in mind the stand of the husband in his reply where he has even

otherwise condoned the allegations of the wife leading adulterous life by claiming that he is ready to keep the petitioner as well as to maintain both of them by fulfilling his obligations towards them. In the impugned findings, the courts below on the premise that the wife was in the habit of changing her name from Hindu to Muslim and vice-versa had been cheating many people and further holding out that the respondent-husband is a Muslim and it is permissible under the customary law of the Muslims to keep four wives and therefore, wife is debarred from taking the plea that the husband is living with some other lady or in adultery certainly is feudalistic approach into the matter and needs to be discouraged by the courts as it is clearly preferential right of the wife to ensure that her husband does not carries on such multifarious liaison. Infact in the approach of this Court is one of the basic reasons why the wife the present applicant-petitioner has been forced to leave her husband. Besides the fact the courts below had heavily placed reliance on allegations in a criminal case proved by the husband as Ex. R3 and which document was never confronted to the wife certainly renders it to be unacceptable piece of evidence. More-so it is settled proposition of law that an evidence led in one case cannot be considered as a legitimate piece of evidence in another case unless and until the rules of Evidence Act are completely adhered to.

In the light of what has been detailed and discussed above, the impugned findings certainly are wrong interpretation holding the approach of the two courts is highly perverse. Since a valuable right of the petitioner has been violated and denied which is the basic tenet of this fundamental right of life and liberty and thus, provisions of Section 482 Cr.P.C. which are certainly to be sparingly used needs to be put to use in the interest and dispensation of justice. In the light of the same, the impugned findings are set aside by way of acceptance of the present petition.

In the light of what has been detailed in the pleadings and the evidence, it would be suffice to hold by some amount of guess work and hypothetical calculations, keeping in view the present trend of cost of living including essential items that the respondent-husband is directed to pay a sum of Rs 5000/- per month as maintenance from the date of filing of the main application by the wife. The present matter in the light of the same, stands disposed of.

February 13, 2019**'tiwana'****(Fateh Deep Singh)
Judge***Whether speaking/reasoned ?**Yes/No**Whether Reportable ?**Yes/No*