

102.

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

CRM-M-30906-2017

Date of decision:23.05.2019.

NIRMAL SINGH

.... Petitioner

versus

REKHA RANI & ANR.

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Arpan Sabharwal, Advocate,
for the petitioner.

Mr. N.S. Sodhi, Advocate,
for the respondents.

HARI PAL VERMA, J.

Petitioner-Nirmal Singh has filed the present petition under Section 482 Cr.P.C. for setting aside the order dated 03.07.2015 (Annexure P-8) passed by learned Judicial Magistrate Ist Class, Jalandhar whereby on an application filed by the respondents under Section 125 Cr.P.C. for interim maintenance, the petitioner was directed to pay monthly interim maintenance @ Rs.4,000/- to respondent No.1-Rekha Rani from the date of application along with litigation cost assessed at Rs.5,000/-. Further prayer has been made that during the pendency of present petition, the conditional warrant of arrest of attachment of salary dated 06.07.2017 as issued by learned Judicial Magistrate Ist Class, Jalandhar (Annexure P-11) against the petitioner, may be stayed.

Briefly stated, the respondents filed an application under Section 125 Cr.P.C. for interim maintenance against the petitioner. As per

the application, respondent No.1 Rekha Rani was married with the petitioner-Nirmal Singh on 23.12.2012. Out of this wedlock, no child was born. Earlier to this marriage with the petitioner, the respondent No.1 was married with one Lakhwinder Singh and from that marriage, three children (i.e. two daughters and one son) were born to them.

As per the respondents, at the time of marriage with the petitioner, it was agreed that petitioner will also maintain respondent No.2- Ravdeep Kaur who is under the care and custody of respondent No.1. Being an inter-caste marriage, it was not accepted by the parents of the petitioner and for this reason, petitioner and respondent No.1 had approached this Court under Section 482 Cr.P.C. seeking protection to their life and liberty. As per respondent No.1, petitioner was instigated by his family members on the pretext that respondent No.1 was earlier married and had three children, therefore, she should bring money in the shape of compensation, for this reason, the petitioner used to beat respondent No.1 under the influence of liquor and intoxicants of course under the instigation of his parents.

Respondent No.1 claiming to be a destitute lady and respondent No.2 a school going child having no independent source of income and neither having any movable nor immovable property, whereas the petitioner is a man of means and earning not less than Rs.25,000/- per month being government employee, filed an application seeking interim maintenance of Rs.15,000/- per month.

The said application was opposed by the petitioner on the ground that the respondents have no locus to file the present petition as she has not approached the court with clean hands. According to the petitioner,

taking divorce from him, she got her second marriage solemnized with one Om Kumar of Saharanpur and that marriage is still subsisting and has not been dissolved yet legally. She has solemnized marriage with the petitioner by concealing the factum of already subsisting marriage with Om Kumar and this fact has been concealed upto this Court when the petitioner and respondent No.1 filed a petition under Section 482 Cr.P.C. seeking protection to their life and liberty. Though on merits, the factum of marriage between respondent No.1 and petitioner was admitted by the petitioner, but he denied his responsibility to maintain respondent No.2 on the ground that he was neither aware of any child from earlier marriage nor he has taken any such responsibility as alleged. He has also denied the responsibility of respondent No.1 on the ground that his marriage with respondent No.1 is no marriage in the eyes of law as her earlier marriage with Om Kumar still subsists.

Learned Judicial Magistrate Ist Class, Jalandhar though vide order dated 03.07.2015 has declined maintenance to respondent No.2, but has awarded interim monthly maintenance to respondent No.1-wife during the pendency of the petition. The relevant paras of order dated 03.07.2015 read as under:-

“6. This court is of considered view that as far as claim of petitioner no.2 is concerned the same is liable to be rejected on the ground that under 125 Cr.P.C. only the legitimate and illegitimate child is entitled to maintenance and admittedly the petitioner no.2 is neither the legitimate nor illegitimate child of respondent and further there is no adoption as alleged on the file, therefore by simply stating that the respondent has undertook to maintain the child will not fasten him with statutory liability, if the child is not able to maintain himself

there is every remedy available under law and also under 125 Cr.P.C. to claim maintenance from the father i.e. Lakhwinder Singh in the present case. As a result of prayer for interim maintenance on the part of petitioner no.2 is declined.

7. *Further, for the relief of petitioner no.1 since this is an interim stage, this court is not go into matter as to whether the facts so stated in the petition qua cruelty and stated in the written rely qua act and conduct of the wife towards respondent, as the same is matter of evidence. Relationship between the respondent and applicant no.1 as well as applicant no.2 is admitted. The main and sole attack to the prayer of interim maintenance of petitioner no.1 is that she is not legally married wife as she is having one subsisting marriage with Om Kumar of Saharanpur. To substantiate this claim the respondent has relied upon the F.I.R. and the statement suffered in the court that the report under Section 173 for commission of offence punishable under Section 420 and 494 IPC has been forwarded, which proves that the petitioner no.1 was earlier married. But that fact is subject to scrutiny by the court and is subject to evidence, at this stage without any findings of the competent court upon the police report this court cannot consider the police report as the gospel truth of the fact that respondent is having subsisting marital ties with Om Kumar as alleged. Therefore, at this stage the petitioner no.1 is found entitled to maintenance being wife and the respondent is under legal as well as moral obligation to maintain his wife and child. However, it is made clear that if it is found that the petitioner no.1 is found to have guilty of concealing subsisting marriage the respondent will have right to recover the maintenance so given.*

8. *So far a quantum of the interim maintenance is concerned the applicant has placed on record proof of source of income of the respondent, wherein the net income of the respondent is shown to be Rs.15009/-.*

9. *So, keeping in view the aforesaid discussion, status of the parties and owing to the fact that the respondent has nowhere stated that he is giving anything to the applicants, the respondent is directed to pay monthly amount of Rs.4000/- to the wife i.e. petitioner no.1 as maintenance during the pendency of the petition, lastly, the respondent has not pointed out anything nor the judicial file reveals any act on the part of the petitioner/applicant no.1 making her dis-entitle to claim relief from date of application as such respondent is directed to maintain the applicant no.1 from date of application, he is also directed to pay litigation cost at the rate of Rs.5000/-.”*

Learned counsel for the petitioner has argued that after getting protection from this Court vide order dated 16.01.2013 passed in **CRM-M-34206-2012** titled as ***Rekha Rani and another Versus State of Punjab and others***, the parties stayed together only for few days.

He has further argued that respondent No.1 was earlier married to one Lakhwinder Singh. However, this marriage was dissolved by way of decree of divorce under Section 13 of Hindu Marriage Act vide judgment dated 03.01.2011 passed by learned District Judge, Kapurthala. The petitioner came to know that his marriage with respondent No.1 was not the second marriage of the respondent No.1 but in fact it was her third marriage. After getting divorce from Lakhwinder Singh, respondent No.1 was married to one Om Kumar of Saharanpur and till date, her marriage with Om Kumar has not been dissolved. He has referred to the voter list (Annexure P-3) to support this contention. However, after coming to know that respondent No.1 is married to Om Kumar, the petitioner, being aggrieved by this act, filed a petition under Section 11 of Hindu Marriage Act for annulment of his

26.01.2014 under Sections 420 & 495 of IPC at Police Station Kartarpur, District Jalandhar City. In order to exert pressure upon the petitioner, respondent No.1 also got an FIR registered against the petitioner under Sections 376-B, 506, 511 of IPC on 08.09.2014 with Police Station Kartarpur, District Jalandhar Rural. Though the petitioner was acquitted of the said charges, but has been convicted under Section 354 IPC vide judgment dated 08.11.2016, against which, appeal is pending. Thereafter, respondent No.1 filed a petition under Section 125 Cr.P.C. claiming maintenance on the ground that she is a destitute lady and respondent No.2 is a school going child and they have neither any source of income nor any movable or immovable property. Vide order dated 03.07.2015, petitioner has been made to pay maintenance @ Rs.4,000/- per month to respondent No.1 only. Respondent No.1 filed another application under Section 24 of Hindu Marriage Act claiming maintenance *pendente lite* for herself and respondent No.2, whereby while allowing the application vide order dated 07.09.2015, learned Additional District Judge, Jalandhar has directed the petitioner to pay a sum of Rs.10,000/- per month to the respondents (i.e. Rs.7,000/- to respondent No.1 and Rs.3,000/- to respondent No.2). Petitioner has challenged the said order before this Court by filing a Civil Revision No.7046 of 2016 which is pending before this Court. Respondent No.1 also filed two applications under Section 128 Cr.P.C. for directing the petitioner to pay the arrears of maintenance whereby learned Judicial Magistrate Ist Class, Jalandhar vide order dated 06.07.2017 issued conditional warrants along with the warrants of attachment of salary of the petitioner. Thus, the petitioner is left with no other option but to approach this Court through the

I have heard learned counsel for the parties.

The petitioner has challenged the impugned order dated 03.07.2015 passed by learned Magistrate on a plea that the marriage between respondent No.1 and the petitioner is no marriage in the eyes of law and the marriage, if any, is null and void as respondent No.1 has concealed the very factum of her second marriage with Om Kumar, which has not yet been dissolved in accordance with law. Respondent No.1 solemnized marriage with the petitioner during subsistence of her marriage with Om Kumar and in this manner, she has cheated the petitioner, for which, an FIR No.12 dated 26.01.2014 under Sections 420 & 495 of IPC was registered with Police Station Kartarpur, District Jalandhar City, against her. Petitioner is earning only a sum of Rs.15,000/- per month and has already been ordered to pay Rs.10,000/- as maintenance *pendente lite* under Section 24 of Hindu Marriage Act and another Rs.4,000/- per month has been ordered to pay as interim maintenance in the present litigation. Therefore, once the petitioner has already been made to pay Rs.10,000/- as maintenance *pendente lite* under Section 24 of Hindu Marriage Act, the interim maintenance so awarded by the learned Magistrate @ Rs.4,000/- per month in proceedings under Section 125 Cr.P.C., is not sustainable. During the course of arguments, learned counsel for the respondents has produced a photocopy of judgment dated 25.09.2018 passed by learned Judicial Magistrate Ist Class, Jalandhar whereby the prosecution has failed to prove that respondent No.1 was married to Om Kumar before marrying with the petitioner-Nirmal Singh and she (Rekha Rani) has been acquitted. The basis of the prosecution case is that respondent No.1 was earlier married twice and by keeping the petitioner in dark about her earlier two marriages before she married the

petitioner, but her earlier marriage has not been proved by the prosecution. The prosecution has failed to prove the very basis of the present case and in this manner, respondent No.1 was acquitted from the charges under Sections 420 and 495 of IPC. Therefore, the ground as raised by learned counsel for the petitioner that respondent No.1 is married with Om Kumar has lost its sanctity once respondent No.1 has been acquitted for that very charges by the learned Magistrate vide judgment dated 25.09.2018. Moreover, the awarded maintenance is interim in nature and would be ultimately governed by the final judgment in the case.

The argument of learned counsel for the petitioner that after having been granted protection from this Court in a petition under Section 482 Cr.P.C., the parties stayed together only for few days, is immaterial once it is established that the petitioner along with respondent No.1 have approached this Court and sought protection on a plea that they were married to each other. Moreover in order to grant interim maintenance under Section 125 Cr.P.C., strict proof of marriage is not required. In the case in hand, the petitioner has admitted the very factum of marriage with respondent No.1, but he intends to plead that the marriage was solemnized after concealing the material fact of the earlier subsisting marriage. This plea will remain available to the petitioner during the course of final adjudication of the case, but since the present petition has arisen from interim maintenance so awarded by the Magistrate, this Court is not giving any observation as regard the factum of concealing of the marriage by respondent No.1 with the petitioner.

Accordingly, without observing anything on the merits of the

petitioner and respondent No.1 and they also sought protection from this Court and further, the awarded maintenance being interim in nature, this Court does not find any illegality in the orders passed by the courts below.

Accordingly, the present petition stands dismissed with costs of Rs.10,000/- payable by the petitioner to the respondents.

(HARI PAL VERMA)
JUDGE

23.05.2019
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No