

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

**CRM M-41715-2017 (O&M)
Date of Decision : 22.05.2019**

Daksh Verma

..... Petitioner

Versus

Gautam Verma

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Sunil K.Nehra, Advocate
for the petitioner.

Mr. Parvinder Singh, Advocate
for the respondent.

RAJ SHEKHAR ATTRI, J. (Oral)

Petitioner Daksh Verma (minor) has preferred the instant petition under Section 482 Cr.P.C. for quashing of the order dated 07.06.2016 (Annexure P-5), passed by the learned Judicial Magistrate Ist Class, Mohali vide which the application filed by him under Section 128 Cr.P.C. read with Section 125 (3) Cr.P.C. for enforcement of order dated 23.07.2014, was dismissed and the order dated 04.10.2017 (Annexure P-6), passed by the learned Addl. Sessions Judge, SAS Nagar (Mohali) vide which the revision petition, preferred by the petitioner against the aforesaid order dated 07.06.2016 has been dismissed.

In the petition under Section 125 Cr.P.C., minor petitioner was granted maintenance at the rate of Rs.7,000/- per month vide order dated 23.07.2014, passed by the learned Judicial Magistrate Ist Class, Mohali. The said order was never set aside and it is very much in existence till today.

Unfortunately, the parents of the minor had discordial relations, therefore, the mother of the petitioner Smt. Anju Verma filed a divorce petition which was allowed vide order dated 14.10.2014, passed by the learned Addl. District Judge, SAS Nagar, Mohali.

Respondent Gautam Verma challenged the said order by filing FAO No.M-36-2016. In the said appeal, compromise was effected between the parties and the father-respondent undertook to pay Rs.3,000/- per month to the petitioner and the said petition was disposed of by the following order dated 02.09.2015:-

“A perusal of the affidavits reveal that the appellant has agreed that custody and guardianship of the minor shall vest in the respondent-Anju Verma. The appellant shall be entitled to visit the child on the first Saturday of every month from 2.00 PM to 4.00 PM, under the direct supervision of the Secretary, Legal Services Authority, Sector-43, Chandigarh. The appellant shall, as agreed, deposit Rs.3,000/- (Three | Thousand) every month, in the minor's bank account No.65200809497, maintained in the State Bank of Patiala, High Court Branch, Chandigarh, till he attains majority.”

The minor petitioner filed an application under Section 128 read with Section 125 (3) Cr.P.C. against his father for enforcement of order dated 23.07.2014, passed by the learned Judicial Magistrate Ist Class, Mohali, but the said application was declined vide order dated 07.06.2016 (Annexure P-5) on the ground that in pursuance of the order dated 02.09.2015, passed by this Court, he is entitled only for Rs.3,000/- per month. The petitioner challenged the said order by filing a revision petition which was also dismissed vide order dated 04.10.2017 (Annexure P-6)

I have heard learned counsel for the parties and have gone

through the record.

The maintenance order dated 23.07.2014 (Annexure P-1) attains finality qua the respondent.

Minor petitioner was not the party to the divorce petition. Therefore, whatever was agreed between his parents he is not bound by that. It is not clear from the affidavit of his father as to whether he offered to pay maintenance at the rate of Rs.3,000/- per month in addition to the maintenance already granted by the learned Magistrate vide order dated 23.07.2014 (Annexure P-1). However, the maintenance granted to him cannot be curtailed solely on the ground that in the matrimonial proceedings, the father undertook to pay Rs.3,000/- per month.

In this view of the matter, the impugned orders dated 07.06.2016 (Annexure P-5) and 04.10.2017 (Annexure P-6) are not sustainable in the eyes of law and the same are hereby set aside. The petitioner is entitled to receive Rs.7,000/- per month as ordered by the learned Magistrate vide order dated 23.07.2014 (Annexure P-1) under the provisions of Section 125 Cr.P.C. However, if any amount has already been paid to him in pursuance of the order of this Court that shall be adjusted towards the maintenance.

22.05.2019
mamta

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No