

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

CRM-M No.9642 of 2017
Date of decision: 22nd May, 2019

Anil Goel

... Petitioner

Versus

State of Haryana & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Saurabh Arora, Advocate for the petitioner.
Mr. Baljinder S. Virk, Dy. Advocate General, Haryana
for the respondent/State.
Mr. S.K. Garg Narwana, Senior Advocate with
Ms. Tanvi Mittal, Advocate for respondent No.2.

FATEH DEEP SINGH, J.

Petitioner husband Anil Goel through this petition under Section 482 Cr.P.C. filed against the wife Shweta Mittal and another has sought quashment of the proceedings got initiated under Section 125 Cr.P.C. (Annexure P2) as well as application for grant of ad-interim maintenance (Annexure P3) and all proceedings arising therefrom.

The prime reasons for instituting of this petition are that the husband claims that he along with wife were citizens of United States of America and had entered into a matrimonial dispute which was settled through a decree of divorce by a Superior Court of Washington County of Snohomish and claims that the wife has been granted movable and immovable properties by the Court and therefore, the present application

for maintenance did not lie nor the Courts in India had the jurisdiction to entertain, try and decide the present maintenance application, and hence the petition.

The wife in her reply took the plea denying the contentions of the petitioner husband and claimed that petition under Section 482 Cr.P.C. was not maintainable and has denied that she is being regularly paid maintenance by the husband and rather claimed that the husband has backed out of the same. The wife has also challenged the applicability of the decree of divorce granted by the US Court being against the natural justice and inapplicable to this country. Though the wife has accepted the fact of having instituted an application under Section 125 Cr.P.C. seeking maintenance allowance from the husband wherein she has also been granted interim maintenance and which is her fundamental right, and even minor child born out of this wedlock has been deprived of facility by the husband and therefore, terming each and every averment to be false and incorrect, sought dismissal of the same.

Appreciating the submissions, it is by no means differed that the parties entered into a wedlock on 26.02.2001 in Panipat (India) and it is on 17.12.2003 out of this wedlock, a girl child was born to the couple who still is a minor. It is also not in any manner put to question as to the matrimonial dispute between the parties and passing of the divorce decree by a Court in United States of America.

The contentions of learned counsel for the petitioner Mr.Saurabh Bajaj, Advocate that the wife cannot file a maintenance application in India has been well controverted by the learned counsel for the private respondent Mr. S.K. Garg Narwana, Senior Advocate assisted by Ms. Tanvi Mittal, Advocate. It is well elicited in Section 125 Cr.P.C. that if any person having sufficient means who neglects or refused to maintain, in the present case wife and a minor child, a Magistrate after adopting due process of law can award maintenance and by virtue of Section 125(2) Cr.P.C. a provision for grant of interim maintenance has been provided for. It is nobody's case before this Court that the husband does not have sufficient income or earnings or that the wife has sufficient property/income to maintain herself. No doubt, the Court in United States while granting divorce, had under the US Law given immovable properties to the wife but in the absence of any apparent earnings/income from the same, this Court is slow to accept the arguments of learned counsel for the petitioner that the wife is self-reliant on that score. To the specific query of the Court, even learned counsel for the petitioner could not show any document to prove that the minor child or the wife is being paid maintenance allowance by the husband and therefore in the absence of cogent evidence to that effect it cannot be held that the wife and the minor daughter have sufficient income for their maintenance. The wife as per the address shown, claims to be residing in Panipat (Haryana) and therefore under the provisions of Section 126 Cr.P.C. such proceedings

for grant of maintenance can be initiated either where the husband or the wife resides, or where they have last resided and moreover, in a recent view of Hon'ble the Supreme Court in the case of **'Rupali Devi vs. State of Uttar Pradesh & others'** (Criminal Appeal No.71 of 2012, decided on **09.04.2019**, it is open for a spouse to institute proceedings of such a nature at a place where she resides and therefore this argument so put forth by the learned counsel for the petitioner does not cut much ice.

The second leg of submissions that the proceedings have already been culminated over their matrimonial dispute in a foreign Court, does not have much relevance for the present case as the learned counsel for the petitioner could not show by what means he claims that the judgment delivered by a US Court is binding between the parties in India as well, in the absence of any treaty under the Geneva Convention or any law to that effect applicable to the parties and that there is nothing substantial to show that the wife had conceded to this jurisdiction of foreign Court and without the wife submitting herself to the jurisdiction, it cannot be a valid and binding decree on her. More so, learned counsel for the petitioner could not show where an allowance for regular payment of maintenance to the wife and the child have been enshrined in the said decree and when it finds categorically mentioned that it does not apply to money judgment summary. Reliance placed on **'Smt. Satya vs. Teja Singh'** 1975 AIR (SC) 105.

It cannot be accepted that the judgment delivered by the US Court is binding on the Courts in India. More so, the judgment that is sought to be relied upon by the petitioner side (Annexure P1) pertains to a decree of divorce between the parties and does not pertain to the rights of the wife and the minor child for the grant of maintenance. It needs to be reiterated here that the proceedings under Section 125 Cr.P.C. are more of welfare in nature for betterment of the dependents and therefore, needs to be liberally construed to advance the cause of justice and cannot be scuttled for moving such a petition under Section 482 Cr.P.C. where the Court cannot go into adducing evidence and it is only at the trial of the application for maintenance at the final conclusion, the Court would be able to determine the worth of the application under Section 125 Cr.P.C. Thus, this Court does not find any merit in the present petition and the same stands dismissed.

(FATEH DEEP SINGH)
JUDGE

May 22, 2019

rps

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No