

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR(F) 414 of 2016
Date of Decision: May 17, 2019

Lalit Yadav

.....Petitioner

Versus

Jyoti Yadav

.... Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Ashit Malik, Advocate
for the petitioner.

Mr. Punit Malik, Advocate
for the respondent.

FATEH DEEP SINGH, J. (Oral)

Petitioner Joyti Yadav present respondent initially filed an application under Section 125 Cr.P.C. seeking maintenance against Lalit Yadav husband (now petitioner) seeking maintenance allowance. The Court of learned District Judge, Family Court, Gurgaon, vide impugned judgment dated 28.09.2016 allowed the application and directed the respondent/husband to pay a sum of Rs.30,000/- per month to the petitioner/wife as well as her minor daughter and out of this amount Rs.8,000/- was to be paid to the girl child.

The husband/present revisionist aggrieved over the same has come up in this invocation by virtue of this revision under Section

401 Cr.P.C.

Heard Mr. Ashit Malik, Advocate for the petitioner, Mr. Punit Malik, Advocate for the respondent and perused the records.

As is there the arguments of Shri Ashit malik, learned counsel for the petitioner that the husband during the course of trial of the application under Section 125 Cr.P.C. had moved an application under Section 311 Cr.P.C. to enable him to lead additional evidence. It is contended that the same was filed before the Court below on 04.04.2016 and regarding which notice was issued to the opposite side and reply was filed by the wife on 25.04.2016, copy of which is there in the records.

The arguments that have been vociferously made by the counsel for the petitioner Mr. Ashit Malik is that the application so moved by the husband was never disposed off by the trial Court and, thus, immense prejudice has been caused to the case of the petitioner/husband. Though Mr. Punit Malik, counsel for the respondent does not dispute these submissions and has sought to prevail upon the Court that no prejudice is caused to the petitioner/ husband as earlier he had the opportunity to cross-examine this witness regarding which the application has come about for re-summoning him to enable his further cross-examination and has rather sought to take refuge that it will unduly prolong the matter.

Appreciating the submissions, the arguments of the

counsel for the petitioner Mr. Ashit Malik is duly corroborated by the records of the trial Court. Thus, by this act of the trial Court before whom, such an application was moved of which notice was issued and reply was filed by the other side and its non-decision by the Court certainly has its own adverse impact on the case of then applicant/present petitioner, which goes to the very root of the case of the petitioner/husband.

Thus, in the light of this denial of legitimate right by not deciding upon such an application tantamounts denial of fair opportunity to a party to represent his case. Thus, in the light of this to the mind of this Court necessitates that on account of this serious remiss the impugned finding dated 28.09.2016 are hereby set-aside directing that the matter be remanded and the Court below should thereafter process the matter in accordance with law and dispose off the application under Section 125 Cr.P.C.

Since there is non grant of interim maintenance throughout the period of filing of this petition as this Court vide order dated 01.12.2016 had stayed operation of the impugned order under challenge, however, considering the fact that the provisions of Section 125 Cr.P.C. are welfare in nature for the betterment of the dependents necessitates the grant of interim maintenance at the same very rate at Rs.30,000/- p.m. to both wife and the minor child for the period of this pendency.

Ordered accordingly.

Parties alongwith their counsel are directed to appear
before the Court below on 26.07.2019.

May 17, 2019
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking	:	Yes/No
Whether reportable	:	Yes/No