

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

CRR No.2243 of 2018 (O&M)
Decided on:- March 08, 2019.

Pardeep Sharma.

.....Petitioner.

Versus

Nirvi minor daughter through her mother Priya Sharma.

.....Respondent.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. S.K. Rattan, Advocate
 for the petitioner.

Mr. A.K. Singal, Advocate
 for the respondent.

HARI PAL VERMA, J.

The petitioner has filed present criminal revision against the judgment dated 07.06.2018 passed by learned Sessions Judge, Panipat, whereby the revision petition filed by respondent Nirvi minor daughter of Priya Sharma against the order dated 03.09.2016 passed by learned Judicial Magistrate 1st Class, Panipat, was allowed.

Vide order dated 03.09.2016, learned Magistrate had dismissed the application filed by the respondent for grant of interim maintenance on the ground that Priya Sharma mother of minor Nirvi is herself an earning lady and she has wilfully chosen to look after the child and she has not allowed the

petitioner-father to meet the child and, therefore, Priya Sharma, being a working woman is financially capable of taking care of her needs.

Briefly stated, a petition under Section 125 Cr.PC for grant of maintenance was filed by respondent Nirvi through her mother Priya Sharma. The petitioner got married with Priya Sharma on 05.02.2013 and out of this wedlock, a daughter Nirvi was born to them. On account of demand of dowry and for giving birth to a girl child, behaviour of the petitioner-husband and his family became cruel towards respondent Nirvi and her mother Priya Sharma. Therefore, the mother of Nirvi was compelled to send Nirvi in the custody of her maternal grandfather and since 03.10.2014, she is staying with them. In the midnight of 27/28.05.2015, the petitioner had gone to the house of grandparents of Nirvi and tried to kill Nirvi and her mother Priya Sharma by hitting them with his car for which a complaint was filed by grandfather of Nirvi to the Superintendent of Police, Panipat by way of registered post. The petitioner is working with Idea Cellular Limited, Mohali as Manager and getting salary of Rs.70,000/- per month and he being father is under legal obligation to maintain his daughter. As he neglected the daughter (respondent Nirvi) without any reasonable excuse, the respondent is entitled to Rs.30,000/- per month as maintenance allowance and Rs.33,000/- as litigation expenses and he is legally and morally bound to maintain his daughter and pay the claimed maintenance.

During pendency of the aforesaid petition under Section 125 Cr.PC, an application for grant of interim maintenance was filed by minor respondent Nirvi through her mother, which was dismissed by learned

Magistrate vide order dated 03.09.2016. The said order was made subject matter of challenge by way of revision by respondent Nirvi. The revision petition was allowed by learned Sessions Judge, Panipat vide impugned judgment dated 07.06.2018 and the petitioner was directed to pay interim maintenance @ Rs.8,000/- per month to the respondent from the date of filing of the application till the decision of the main petition.

The aforesaid judgment dated 07.06.2018 has been challenged by the petitioner in the instant criminal revision.

Learned counsel for the petitioner has argued that vide order dated 30.05.2017 passed by learned Judicial Magistrate 1st Class, Panipat, the very petition filed by the respondent under Section 125 Cr.PC was dismissed for want of evidence/non-prosecution. Therefore, once the main petition was dismissed by the trial Court, the revision against the order dated 03.09.2016 passed by learned Magistrate, was liable to be dismissed being no more maintainable on 30.05.2017. However, when no action was taken by the revisionary Court, an application dated 07.10.2017 was moved by the petitioner with a prayer for dismissal of the revision petition being infructuous/ not-maintainable.

He has further argued that the main petition has not been restored so far, as the petitioner has not received any notice from the Court of Judicial Magistrate 1st Class, Panipat regarding restoration of the case. But still, vide impugned judgment dated 07.06.2018 passed by learned Sessions Judge, Panipat, the revision petition filed by the respondent has been allowed. Even

if the respondent has filed an application for restoration of the main petition before learned Magistrate on 18.11.2017, the Magistrate has no power to review its own order and the main petition is not liable to be restored.

Learned counsel for the respondent has argued that the respondent is minor and the trial Court should not have dismissed the application for interim maintenance on account of non-appearance of the respondent and the trial Court should have appointed a court guardian to protect her interest. The application seeking restoration of the petition under Section 125 Cr.PC was filed by the respondent on 18.11.2017, which is fixed for appearance of the petitioner herein for 18.05.2019, but the petitioner is avoiding his appearance. The revisionary Court has allowed the revision with an observation that the interim maintenance would be payable upto the decision of the main petition.

I have heard learned counsel for the parties.

The argument as advanced by learned counsel for the petitioner is that the application filed by the respondent for interim maintenance was dismissed by learned Magistrate vide order dated 03.09.2016 observing therein that it appears that Priya mother of Nirvi has not been taking personal care of the child, as despite the directions given by the Court, neither she appeared nor had produced the child before the Court, drawing an adverse inference against her and as Priya, who has filed the application under Section 125 Cr.PC is an earning lady and has chosen to look after the child, therefore,

she being a working lady is financially capable to take care of the needs of the child and, therefore, not entitled for interim maintenance.

The said order dated 03.09.2016 passed by learned Magistrate was challenged by the respondent by way of revision petition before the Court of Session. Learned Sessions Judge, Panipat vide impugned judgment dated 07.06.2018 allowed the revision petition and recorded a finding that respondent Nirvi is child of more than 3 years of age and her protection and welfare can be taken care of by her mother. Therefore, the Magistrate should not have declined the prayer of the respondent for interim maintenance. Moreover, the petitioner is working as Manager in India Cellular Limited, Mohali and this fact has not been disputed by the petitioner as well. The revisionary Court has, therefore, directed the petitioner to pay interim maintenance allowance of Rs.8,000/- per month to the minor respondent, of course, while assessing the monthly maintenance expenses of the minor child not less than Rs.16,000/- per month.

The argument of learned counsel for the petitioner that the revision petition pending before the revisionary Court was required to be dismissed for the reason that the main petition has been dismissed for non-prosecution by learned Magistrate, is liable to be negated for the reason that after passing the order dated 30.05.2017 by learned Magistrate, whereby the main petition was dismissed for want of evidence, the respondent has filed an application seeking restoration of the case and enough efforts were made by her to serve the petitioner, but the petitioner is avoiding appearance obviously to deprive the respondent of her right to claim maintenance.

As per the pay slip of the petitioner for the month of January, 2016, his gross salary comes to Rs.43,553/- per month, though with certain deductions, but even if it is accepted that the carry home salary of the petitioner is Rs.32,000/- per month, then also, this Court finds that the awarded maintenance @ Rs.8,000/- per month is certainly not on higher side. Moreover, the awarded maintenance is interim in nature and in case it is found that the respondent is not entitled for maintenance, still the petitioner would be at liberty to raise all the pleas as available to him before learned Magistrate.

Therefore, this Court finds that there is no illegality in the impugned judgment dated 07.06.2018 passed by learned Sessions Judge, Panipat, which may warrant interference by invoking revisionary jurisdiction of this Court.

Accordingly, affirming the impugned judgment dated 07.06.2018 passed by learned Sessions Judge, Panipat, present criminal revision, being devoid of any merit, is dismissed.

March 08, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No