

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-34703 of 2019

Date of Decision: 26.08.2019

Harvinder Singh

...Petitioner(s)

Versus

Manpreet Kaur & others

...Respondent(s)

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

Present:- Mr. Upender Prasher, Advocate
for the petitioner.

HARI PAL VERMA, J. (Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing of order dated 10.05.2019 passed by Additional Principal Judge, Family Court, Camp Court, Naraingarh, District Ambala in execution petition filed by the respondent, whereby an application filed by the petitioner-Judgment Debtor for staying the execution proceedings was dismissed.

Briefly stated, respondent no.1-wife along with respondent no.2 (daughter) and respondent no.3 (son) had filed a petition under Section 125 CrPC against the petitioner (husband) seeking maintenance. The Family Court issued summons to the petitioner (husband) through registered post, which were received back with the report that the petitioner has refused to accept the same. Accordingly, the petitioner was proceeded against *ex-parte* vide order dated 05.08.2014 passed by the Family Court.

Thereafter, the Family Court after hearing the petitioner and appreciating the evidence produced on record, allowed the petition filed under Section 125 CrPC, directing the petitioner-husband to pay a sum of Rs.7,000/- per month to respondents i.e. Rs.4,000/- to respondent no.1 and Rs.1,500/- each to respondents no.2 and 3 vide order dated 15.04.2015. Relevant extract of the order passed by learned Additional District and Sessions Judge, Ambala read as under:-

6. *The petitioner No.1 being legally wedded wife and petitioners No.2 and 3 being legitimate children of the respondent deserve their right to claim maintenance from the respondent. Petitioner No.1 was subjected to cruelty during her stay in the matrimonial home and was deserted by the respondent. The allegations of the petitioner No.1 have gone un rebutted and unchallenged as respondent is ex parte. Although petitioner No.1 has made statement that she does not want to live with the respondent but she also stated that he used to give beatings to her on account of demand of dowry. In these facts and circumstances of the case, it cannot be said that petitioners are willfully residing separately from the respondent or that there were cordial relations between the parties. Further, from the record, it is also not presumable that the petitioner No.1 is earning hand or she is capable of maintaining herself as well as her minor children. Taking into consideration these facts, petitioners cannot be denied to claim maintenance from the respondent. In Chaturbhuj Vs. Sita Bai 2008(1) Civil Court Cases 100(Supreme Court) the Hon'ble Supreme Court of India has held that Section 125 of the Code of Criminal Procedure, 1973 is a measure of social justice and is specially enacted to protect women and children. It has been further held that the object is to prevent vagrancy and destitution and a speedy remedy for the supply*

of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves.

7. As far as quantum of maintenance is concerned, petitioner No.1 has pleaded the income of the respondent as Rs.30,000/- per month as he is carpenter by profession. Although, no document is available on record with regard to the exact income of the respondent, however, being a carpenter, the income of respondent can be taken to be as that of a skilled labourer. In the facts and circumstances of the case, the respondent must have been earning about Rs.15,000/- per month from all sources. Accordingly, taking into account the income of the respondent being Rs.15,000/- per month coupled with the need of the petitioners, the respondent is directed to pay a sum of Rs.7,000/- per month to the petitioners i.e. Rs.4,000/- per month to the petitioner No.1 and Rs.1,500/- per month each to the petitioners No.2 and 3 from the date of filing of petition and I order accordingly. Petitioners are also held entitled to litigation expenses at the rate of Rs.5,000/- to be shared equally. Memo of costs be prepared. File be consigned to the record room after due compliance.

Aggrieved from the aforesaid orders dated 05.08.2014, whereby the petitioner was proceeded against *ex parte* and the order dated 15.04.2015, granting maintenance to the respondent, the petitioner filed an application for setting aside these orders. In the meanwhile, the respondents also filed an execution application, claiming maintenance from 05.05.2014 to 14.08.2015 amounting to Rs.1,03,000/-, upon which, the petitioner also filed an application for staying the execution proceedings and setting aside the orders dated 05.08.2014 and 15.04.2015 passed by the Family Court.

However, the application filed by the petitioner for staying the execution of ex-parte judgment dated 15.04.2015 was dismissed by Additional Principal Judge (Family Court), Camp Court at Naraingarh vide judgment dated 10.05.2019 (the impugned order herein).

It is in these circumstances, the petitioner has filed the present petition seeking setting aside of judgment dated 10.05.2019 passed by Additional Principal Judge (Family Court), Camp Court at Naraingarh.

This Court has put a specific question to counsel for the petitioner as to what is the source of livelihood of wife of the petitioner. But the petitioner has shown his complete ignorance about her source of livelihood. Therefore, this Court feels that the respondent no.1 being legally wedded wife of the petitioner and respondents no.2 and 3, being his legitimate children, have their right to claim maintenance from the petitioner.

Counsel for the petitioner could not convince this Court, how the impugned finding has resulted in gross miscarriage of justice necessitating intervention by this Court. Rather, what one can draw from the pleadings and the arguments of counsel for the petitioner is that the sole motive of the petitioner is to delay and defeat the accrued legal rights of the respondents to get the order of maintenance executed. The filing of present petition is nothing but an attempt to harass the respondents. Moreover, in the impugned order, the executing Court has only ordered the petitioner to clear the arrears of maintenance for the period w.e.f. 05.05.2014 to 14.08.2015 only. While passing the impugned order, the executing Court has rightly observed that the respondent being a destitute woman, the

proceedings for recovery of maintenance cannot be lightly stayed, unless a very fit case is made out.

In this view of the matter, this Court is of the view that the impugned order does not suffer from any illegality, irregularity or infirmity and the same does not call for any interference and is hereby affirmed.

Accordingly, the petition is hereby dismissed.

August 26, 2019
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No