

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

CRR (F) No. 360 of 2020

Date of Decision: 18.06.2020

Anita Pal and another

...Petitioners

Vs.

Amit Kumar

...Respondent

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Dinesh Kumar Jangra, Advocate
for the petitioners.

Mr. Chander Shekhar, Advocate
for the respondent

RAJIV NARAIN RAINA, J. (Oral)

1. Prayer in this petition is for setting aside the impugned orders dated 18.3.2019 whereby petition under Section 125 of the Code of Criminal Procedure (for short '*the Code*') filed by wife and son has been dismissed in default and also order dated 23.1.2020 dismissing the application of the petitioners for restoration of the said proceedings.

2. The circumstances leading to the filing of the present petition are that the petitioners filed a petition under Section 125 of the Code against the respondent in the Family Court, Panchkula on the ground that the respondent had neglected to maintain the petitioners being his wife and son. This petition under Section 125 of the Code was dismissed in default of non-appearance of the petitioners on 18.3.2019 by the Principal Judge, Family Court, Panchkula. The Principal Judge, Family Court, Panchkula though recorded in the order that the lawyers are on indefinite strike but

while relying on the various judgments of the Supreme Court took the view that no Court is obliged to adjourn a case because of the strike call given by an association of advocates and accordingly proceeded to dismiss the petition in default.

3. The petitioners applied for restoration of the petition on the ground that the lawyers were not appearing in the Court due to their own cause and she was not available in Panchkula. The petitioner-wife has also explained that she was under the bona fide belief that the case was fixed only for filing of the written statement by the respondent. Prayer of the petitioners for restoration of the petition was declined by the Principal Judge, Family Court, Panchkula on 23.01.2020, relevant part of that order is reproduced below:-

“At the very outset it is pertinent to mention that the order dated 18.03.2019 is very exhaustive and the repercussions on account of non-appearance of counsel on account of strike call given by the Bar have been discussed in detail. The view taken by the Hon’ble Supreme Court has been relied upon. If the said order is undone, the same will amount to review, which is not permissible under criminal law. Even if the arguments advanced by the learned counsel for the petitioner that the proceedings under 125 Cr.P.C. are quasi civil in nature are accepted, then also this Court cannot review the order dated 18.03.2019 as the same does not fulfill the conditions enshrined in Section 114 read with Order XLVII rule 1 of CPC. In the considered opinion the present application was not legal recourse for the petitioner for redressal of her grievance. So far the case law cited by the learned counsel for the petitioner is concerned the same is not applicable and is clearly distinguishable from the facts of the present case. In the cited case the revision petition, which was dismissed in default, was restored and that order was challenged by the husband. Further, from the first paragraph of the judgment passed in the said case it is clear that the petitioner husband had challenged the observations of the court

relating to the merits of the case. Further in para no.9 of the said judgment it has been concluded that if the petition under section 125 of Cr.PC is dismissed in default, it may be restored on showing sufficient cause and the restoration should be liberally construed, but it is not so in the case in hand. Therefore, the application in hand is hereby dismissed.”

4. Learned counsel for the petitioners argues that it is well settled that the proceedings under Section 125 of the Code have been termed as civil or quasi criminal in nature and if the application under Section 125 of the Code has been dismissed in default, it may be restored on showing sufficient cause and the restoration request should be liberally construed to serve the ends of justice.

5. On the other hand, Mr. Chander Shekhar, learned counsel appearing for the respondent submits that the Family Court has rightly dismissed the petition for non-appearance of the petitioners as no inherent powers are vested in the Family Court to restore the petition. Therefore, the impugned orders are just and proper and need not suffer any interference as there is no force in the petition, which is liable to be dismissed.

6. As regards the position of law that a criminal court cannot allow or review its own order except correcting clerical errors in it, it is well settled as there is no provision for review under the Code. Section 362 of the Code places a bar clearly on the Court not to amend the order already passed. The provision under Section 362 is conditioned by words ‘*save as otherwise provided by this Code or by any other law for the time being in force*’.

7. To appreciate the scope of Section 362, it would be appropriate to look into the background in which the impugned order was passed. Petitioners claiming maintenance from the respondent could not appear on the date fixed and also on Account of their counsel being on strike, as it is recorded in the impugned order, they did not appear to press the petition and the same was dismissed by order dated 18.03.2019. The petitioners approached the Family Court with an application that they were not available in Panchkula on the date fixed and their counsel was on strike and no one pressed the petition and that is how it was dismissed without affording any hearing. The learned Family Court in those circumstances, in my view, should have allowed the application permitting them to be heard on merits.

8. Similar question as to whether an application filed under Section 125 of the Code dismissed in default can be restored was considered before a Division Bench of this Court in '**Smt. Kamla Devi and others vs Mehma Singh**' 1989 Crl.LJ 1866. While agreeing with the view expressed by the Delhi High Court in **Suhird Kamra vs. Smt. Neeta**, 1988 Marriage LJ and **Smt. Prema Jain vs. Sudhir Kumar Jain**, 1980 Marriage LJ 17, Justice A.L. Bahri, J speaking on behalf of the Bench held as under:-

"8. The nature of the proceedings in Chapter IX of the Code is inherently concerning civil rights i.e. grant of maintenance to wives, children and the parents. All these orders passed under different provisions of Chapter IX, as briefly noticed above, are interim in nature and can be modified, varied or cancelled on the grounds mentioned therein. Furthermore, such orders are subject to final orders, if any, passed by the civil Courts regarding grant of maintenance. The Criminal

P.C. provides a swift and speedy remedy to the petitioner claiming maintenance who are being neglected. It is only in the matter of implementation of such orders that a stringent provision is made for recovery of such amount as recovery of fine or by sending the person against whom order is made to imprisonment for a certain period till payment is made. This remedy cannot be throttled by procedural technicalities such as non-appearance of the petitioner on a particular day. Such non-appearance in a given case may be beyond the control of the petitioner. In other words, there may be sufficient and cogent reason for the petitioner not to put in appearance when the case was actually called. In such circumstances not to restore the application dismissed in default would result in miscarriage of justice. On a sufficient cause being shown, the Court would have inherent power in such like cases to restore such applications dismissed in default.”

9. In view of the above discussion and paying regard to the legal position, I am of opinion that on the prayer being made, the order dismissing the petition for maintenance in default can be recalled or set aside and the case can be restored to its original position for effective adjudication on merits.

10. Resultantly, the present petition is allowed. The impugned orders dated 18.03.2019 and 23.01.2020 passed by the learned Family Court, Panchkula are set aside. Petition under Section 125 of the Code is ordered to be restored to its original position to be heard on merits.

(RAJIV NARAIN RAINA)
JUDGE

18.06.2020
Kv/Vimal

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*