

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

CRR(F)-378-2020 (O&M)

Date of decision : 21.10.2020

Paramjeet Singh

...Petitioner

Versus

Taranpreet Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Vivek Aggarwal, Advocate for the petitioner.

ANIL KSHETARPAL, J.

The petitioner (the respondents' father) has assailed the order dated 17.01.2020 passed by the Additional Principal Judge, Family Court, Rajpura, while deciding a petition under Section 125 of Cr.P.C. granting maintenance at the rate of Rs.10,000/- per month to each of the respondent. However, the maintenance payable to respondent No.1-Taranpreet Singh has been restricted till he attained the age of majority i.e. 23.04.2019. In other words, now the petitioner is only liable to pay maintenance to his daughter at the rate of Rs.10,000/- per month.

Some facts are required to be noticed.

The petitioner was married to Kuljeet Kaur on 02.04.2000. Out of the wedlock, two children were born i.e. respondent No.1 and 2. On 11.02.2012, the marriage was dissolved by a decree passed under Section 13-B of the Hindu Marriage Act, 1955. It is alleged that they entered into a settlement on 05.08.2011. It was agreed that the wife-Kuljeet Kaur would continue with the custody of two minor children and she will not claim any expenses like maintenance from the petitioner. The petitioner filed an

application under Section 25 of the Guardians and Wards Act, 1890, seeking custody of the respondents in violation of the agreement. On 21.05.2016, the respondents herein filed a petition under Section 125 Cr.P.C. for the grant of maintenance. It may be noted here that Kuljeet Kaur is working as Hindi Teacher drawing salary of Rs.62,000/- to Rs.65,000/- per month, whereas the petitioner is working as Health Supervisor in Civil Dispensary, Rajpura, drawing salary of Rs.58,000/- per month. The petitioner has contracted second marriage with a staff nurse who works in PGI, Chandigarh. The petitioner's mother also gets pension at the rate of Rs.7,500/- per month.

This Court has heard learned counsel for the petitioner at length and with his able assistance perused the paper book.

Learned counsel for the petitioner has raised the following arguments:-

- 1) In view of the agreement dated 05.08.2011, no petition under Section 125 of Cr.P.C. could be filed as the right to claim maintenance was specifically relinquished by their mother.
- 2) Smt. Kuljeet Kaur, the respondent's mother is also drawing salary of Rs.62,000/- to Rs.65,000/- per month and, therefore, she is also liable to contribute.

This Court has considered the submissions.

It may be noted here that the agreement dated 05.08.2011 does not make a provision for payment of any permanent alimony. No doubt, it has been provided that the divorced wife or her children would not claim any maintenance, however, such stipulation being against public policy is

not enforceable in view of Section 23 of the Contract Act. This aspect has been examined by a Division Bench of this Court in **Ranjeet Kaur Vs. Pavitter Singh, 1992 Criminal Law Journal 262**. The Division Bench, after considering the scheme of Article 15(3) read with Article 39 of the Constitution of India and Section 23 of the Contract Act, has held that such contract cannot be enforced. That judgment is with respect to the right of a divorced wife to claim maintenance. Apart therefrom, in any case, the divorced wife could not relinquish the statutory right available to the respondents by a contract particularly when there is no satisfaction recorded that such contract is in the benefit of the minors.

As regards second submission, it may be noticed that respondent No.1 has immigrated to Canada for higher studies. It is not the case of the petitioner that he has contributed any amount. In any case, the Court has ordered that the maintenance would be payable qua respondent No.1 only upto 23.04.2019, i.e. the date when respondent No.1 attained majority.

Qua respondent No.2, the Court has directed the petitioner to pay maintenance at the rate of Rs.10,000/- per month. At the cost of repetition, the petitioner is drawing salary of Rs.58,000/-. Respondent No.2, the petitioner's daughter is studying in Scholars Public School which is a private school. She was born in the year 2004. At the time of filing of the petition in the year 2016, she was studying in 7th class. At this moment, respondent No.2 needs sufficient amount for getting admission in a College or a Professional Institution. The petitioner's second wife is also earning. Even the petitioner's mother is getting pension. In these circumstances, the

maintenance of Rs.10,000/- per month fixed by the Court cannot be said to be on a higher side. Learned counsel repeatedly stressed that Kuljeet Kaur, the mother of respondent No.2 is also liable to contribute. There cannot be any doubt therein. Once, respondent No.2 is studying in a privately managed school, the expenses are not only confined to school fee, transportation etc. but a lot of amount is spent on clothing, food, accommodation, books and other study material. The mother of respondent No.2 must have also spent sufficient amount for helping her son to immigrate to Canada. Respondent No.1 has gone for further studies. In these circumstances, it cannot be said that mother of respondents is not contributing.

However, there is one aspect of the matter which needs attention of the Court. As per interim order passed, the petitioner was made liable to pay school fee of respondent No.2 during the pendency of the petition U/s 125 Cr.P.C.. It is claimed by the petitioner that he has been regularly paying that amount. Keeping in view the facts of the case, the petitioner shall be entitled to move an application before the Court below for adjustment of the aforesaid amount. If such an application is filed, the Court would decide the same in accordance with law.

With these observations, the revision petition is disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the aforesaid order.

21.10.2020

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No