

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

202

CRR-2721-2017

Date of Decision:17.01.2020

Mukesh Kumar

.....Petitioner

Versus

Jyoti Sharma and another

.....Respondents

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

Present: Mr. Gursimranjit Singh, Advocate,
for the petitioner.

Mr. Nitesh Singhi, Advocate,
for the respondents.

HARI PAL VERMA, J.(Oral)

Petitioner has filed the present revision petition impugning the order dated 05.06.2017 passed by learned Additional Sessions Judge, Ludhiana, vide which his appeal against the judgment dated 14.10.2016 passed by learned Judicial Magistrate 1st Class, Ludhiana, whereby objection-petition filed by the petitioner in the execution petition for recovery of arrears of maintenance in proceedings under Section 125 Cr.P.C., was dismissed.

Briefly stated, respondent No. 1 along with her son Nikhil Kumar had filed a petition under Section 125 Cr.P.C. so as to claim maintenance from the petitioner on 29.11.2006, which was allowed by the learned Judicial Magistrate 1st Class, Ludhiana vide order dated 15.07.2009 and petitioner was directed to pay maintenance @ Rs.1,800/- per month to respondent No.1 (wife) and @ Rs.1,200/- per month to respondent No.2

(son). Against the order dated 15.07.2009, respondents filed an execution

application, wherein the petitioner has filed objections, but the objections were dismissed by learned Magistrate vide order dated 14.10.2016. The order dated 14.10.2016 was made subject matter of challenge by way of appeal before learned Sessions Judge, Ludhiana. However, the said appeal was dismissed by learned Additional Sessions Judge on 05.06.2017 leading to present revision petition.

Learned counsel for the petitioner has argued that during the pendency proceedings under Section 125 Cr.P.C., parties have filed a joint petition under Section 13-B of the Hindu Marriage Act (for short “the H.M. Act”) and learned District Judge, Ludhiana vide judgment dated 23.05.2008 has allowed the petition filed by the parties under Section 13-B of the H.M. Act and decree of divorce on the basis of mutual consent was granted. He refers to judgment dated 23.05.2008 (Annexure P-1) and more specifically paragraph 5 of the judgment passed by learned District Judge. He submits that in the judgment, learned District Judge has submitted that the parties have settled their all disputes regarding dowry articles, istri dhan and past and future permanent alimony and nothing is due against each other.

On the other hand, learned counsel for the respondents has argued that the learned District Judge while granting decree of divorce in proceedings filed under Section 13-B of the H.M. Act has passed a very casual order and the parties have suffered no such statement as regards permanent alimony in future and therefore, in order to survive, the respondents being wife and son of the petitioner are legally entitled for maintenance. He has produced on record a photocopy of the statement of the parties recorded on 23.05.2008 in proceedings under Section 13-B of the H.M. Act and submits that there is no such recital in the statement of the

parties, so as to forego past and future permanent alimony and therefore, petitioner is bound to pay maintenance to the respondents, so that respondents can survive.

Heard learned counsel for the parties.

Challenge in the present revision petition is to the order dated 05.06.2017 passed by learned Additional Sessions Judge, Ludhiana, whereby his appeal against the order dated 14.10.2016 passed by learned Judicial Magistrate 1st Class, Ludhiana, vide which objection-petition filed by the petitioner was dismissed. The relevant paragraph 5 of the judgment dated 23.05.2008, whereby decree of divorce under Section 13-B of the H.M. Act was passed, reads as under:-

“I have heard counsel for the petitioners. The petitioners have not been able to reconcile. There is no scope for them to live together. The petitioners have settled all their disputes regarding dowry articles, istri dhan and past and future permanent alimony. Now nothing is left due against each other. It is also agreed between the petitioners that their son will remain with his mother and his father will not claim his custody in future.”

The argument of the learned counsel for the respondents that no such statement was made by the parties as regards past and future permanent alimony, cannot be accepted as there is a clear recital in the judgment passed by learned District Judge that the parties have settled their disputes regarding dowry articles, istri dhan, past and future permanent alimony and nothing is left against each other. Moreover, the decree of divorce dated 23.05.2008 under Section 13-B of the H.M. Act was passed during the pendency of the proceedings pending between the parties under Section 125 Cr.P.C. There is no such rider in the judgment passed between

the parties under Section 13-B of the H.M. Act that they will continue to pursue the proceedings under Section 125 Cr.P.C.

When this Court has specifically put to the learned counsel for the respondents as regards challenge to the order dated 23.05.2008, he has shown his complete ignorance.

In the absence of any other material before this Court and noticing the fact that decree of divorce under Section 13-B of the H.M. Act has been granted, this Court finds that the present revision petition deserves to be accepted. Accordingly, the order dated 05.06.2017 passed by learned Additional Sessions Judge, Ludhiana as well as the judgment dated 14.10.2016 passed by learned Judicial Magistrate 1st Class, Ludhiana, whereby objections were wrongly declined, is hereby set aside.

As the judgment passed by learned District Judge, granting decree of divorce relates to the year 2008, this Court presume that such order must not have been challenged. However, in case learned counsel for the respondents is able to convince this Court that such order was challenged before any court, he would be at liberty to seek recalling of the present order.

The parties shall appear before the court where the execution proceedings are pending on the date already fixed and that court shall decide the objection petition in accordance with law.

January 17, 2020
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No