

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

CRR(F)- 1084-2019 (O&M)

Date of Decision: January 10, 2020

Rekha

... Petitioner

Versus

Saurabh

... Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. B.R. Gupta, Advocate
for the petitioner.

Mr. Suman Jain, Advocate
for the respondent.

JAISHREE THAKUR, J. (Oral)

This is a petition that has been filed under Section 482 of the Code of Criminal Procedure seeking to challenge the order dated 01.11.2019 passed by the Additional Principal Judge, Family Court, Bhiwani whereby the application filed by the petitioner for summoning a witness has been dismissed.

Learned counsel for the petitioner herein contends that there is litigation pending between the parties regarding maintenance before Family Court at Bhiwani. Initially, the District Judge, Family Court, Bhiwani had allowed maintenance by an order dated 28.09.2015, however, on account of changed circumstances and increase in the salary, the petitioner herein filed a petition under Section 127 Cr. P.C. seeking enhancement of the

maintenance already allowed. During the pendency of the proceedings before the Addl. Principal Judge, Family Court, Bhiwani, an application had been preferred to summon an official from the bank to establish the pension that was being deposited in the account of the mother of the respondent. It is stated that the necessity arose to examine the said official on the ground that a plea had been set up by the respondent that he had a liability to maintain his mother which plea could only be countered in case the petitioner was able to establish that the mother had some independent source of income. It is argued that the application has summarily been dismissed. Learned counsel also submits that Section 125/127 Cr. P.C. have been set up as a beneficial piece of legislation to ensure that a person is not rendered destitute and a duty is cast upon the husband to maintain his wife.

Notice of motion was issued and an appearance has been caused by Mr. Suman Jain, Advocate on behalf of the respondent. Learned counsel for the respondent submits that the application seeking to summon a witness does not disclose the reason for doing so while further arguing that the petition under Section 127 Cr. P.C, itself is not maintainable as the petitioner herein has already approached the High Court by filing a revision petition against the order of the District Judge, Bhiwani awarding maintenance under Section 125 Cr.P.C.

I have heard learned counsel for the petitioner and find that there is merit in the submissions of learned counsel for the petitioner. Admittedly, a petition under Section 127 Cr. P.C has been filed seeking enhancement of the compensation that has already been allowed, in spite of

the fact that the order of the District Judge, Bhiwani dated 28.09.2015 is already under challenge. As has been already pointed out by learned counsel for the petitioner, an application under Section 127 Cr. P.C. would be maintainable in case of changed circumstances which in the present case is the increase in the salary of the husband after the passing of said order. No doubt, the application that has been filed seeking to summon the Branch Manager/concerned Clerk of Punjab National Bank, near Bus Stand, Hisar along with the bank account No. 0203000300581167 relating to Smt. Parkash Rani wife of late Sh. Rishi Parkash Jain, bearing PPO No. 95097-S/HR does not disclose the reason for summoning him, but the Court ought not to have dismissed the said application on the ground that reasons had not been stated therein. The Addl. Principal Judge, Family Court has recorded the evidence of Sh. Rajesh Kumar, Clerk, Civil Surgeon, Hisar, PW-3 in which he has clearly stated that he had brought the pension record of the deceased husband of Smt. Parkash Rani but he was not in a position to mention how much pension was being received by Smt. Parkash Rani-mother of the respondent. It is in this background that the petitioner sought to summon the record of the bank which would have reflected the exact pension being deposited in her account to show and establish whether or not she was dependent upon the husband of the petitioner. Even otherwise, the claim of the petitioner cannot be defeated on account of the fault of her advocate in not filing a well-reasoned application.

In the opinion of the Court, such evidence is vital to establish the dependency of the mother on the income of the respondent, which

would have direct bearing upon the quantum of maintenance to be allowed to the petitioner. Therefore, the impugned order dated 01.11.2019 is set aside. The petition is allowed and one effective opportunity is granted to the petitioner to adduce evidence by summoning the witness at her own risk, cost and responsibility. The trial Court is directed to fix an appropriate date accordingly.

Before parting with this order, it is clarified that the question regarding maintainability of petition under Section 127 Cr. P.C., in light of the fact that the order passed by the District Judge, Bhiwani for no maintenance under Section 125 Cr. P.C. is pending in this High Court, is left open to be decided by the Additional Principal Judge, Family Court, Bhiwani.

January 10, 2020

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No