

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

Crl. Misc. M 55496 of 2019 (O&M)
Date of decision: 2.3.2020

Deepak Panchal

...Petitioner

Versus

Smt. Bhawna Panchal and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr.Mandeep Singh Khillan, Advocate,
for the petitioner.

JAISHREE THAKUR, J.

The petitioner herein aggrieved against the order dated 13.11.2019 passed by the Additional Sessions Judge, Kurukshetra has filed the instant petition.

Briefly stated that a marriage was solemnized between the petitioner and respondent No.1 on 10.12.2006 as per Hindu rites and customs at Jind, out of which wedlock one female child was born on 18.9.2007. However, on account of matrimonial discord, the respondents herein filed a petition under Section 125 of the Code of Criminal Procedure for grant of maintenance of ₹25,000/- per month on the ground that the respondent—wife has been thrown out of her matrimonial home and as such she is unable to sustain herself as well as minor child. The said petition was allowed by the Chief Judicial Magistrate, Kurukshetra on 28.10.2014 who

granted maintenance at the rate of 1/3rd of the total salary of the petitioner

i.e. ₹8400/- per month each to both the respondents from the date of filing of the petition. The said order was ex-parte as the petitioner did not put in appearance.

Aggrieved against the said order, an application was filed on 16.11.2017 before the Chief Judicial Magistrate, Kurukshetra, for setting aside ex-parte order dated 28.10.2014. The said application was contested by the respondents herein on the ground that the application was not legally maintainable. It was stated that the petitioner had earlier also moved an application dated 25.5.2017 before the Chief Judicial Magistrate for setting aside ex-parte order, which was dismissed in default on 9.8.2017 and the order had attained finality since there was no application for restoration. It was contended that the petitioner had concealed this fact and, therefore, would not be entitled to any relief from the Court as he has not approached the Court with clean hands. The court dismissed the application on 13.4.2018 on the ground that the petitioner failed to satisfy as to why he did not act within the prescribed period of time. Aggrieved against the said order, a revision was filed before the Additional Sessions Judge, which too was dismissed.

Learned counsel for the petitioner assails both the orders on the ground that the petitioner was not given adequate opportunity of hearing before the order was passed and, therefore, prays for setting aside the impugned orders passed by both the courts below.

I have heard learned counsel for the petitioner and have also perused the pleadings as available on the record.

Admittedly, notice was issued to the petitioner on the

application filed under Section 125 of the Code of Criminal Procedure for grant of maintenance, and the petitioner filed his written statement controverting the allegations made in the petition. The respondents had filed an application for interim maintenance which was allowed by order dated 26.8.2010 and the petitioner herein had been directed to pay maintenance allowance to the respondents at the rate of ₹3,000/- each per month. The parties were allowed to lead evidence in support of their respective claim. However, when the matter was fixed for cross-examination of PW2, namely the respondent—wife, no one put in appearance on behalf of the petitioner herein and he was proceeded ex-parte. The Judicial Magistrate 1st Class, Kurukshetra took into account the fact that during the pendency of the petition, interim maintenance was not paid by the petitioner herein and was also negligent to look after his legally wedded wife and minor child. Taking the income of the petitioner to be ₹25,300/- per month in the year 2010 (based upon the admission of the petitioner himself in the written statement), the Court deemed it appropriate to allow maintenance allowance to the respondents herein to the extent of 1/3rd of his total income i.e. ₹8400/- per month to each of the respondents. The order was challenged in the revision before the Additional Sessions Judge, Kurukshetra, which was dismissed as withdrawn on 15.5.2017 and thereafter an application was preferred before the Chief Judicial Magistrate, Kurukshetra for setting aside ex-parte order claiming that he had not been informed about the proceedings by his counsel, which application was dismissed for non-prosecution by the Chief Judicial Magistrate, Kurukshetra on 9.8.2017. Once again the

petitioner filed an application for setting aside the order dated 28.10.2014 which was numbered as Criminal Misc. No. 51 of 2017. However, he did not disclose to the court that he had already filed an application for setting aside the ex-parte order by way of filing Criminal Misc. 209 of 2017 instituted on 25.5.2017, which was dismissed for non-prosecution on 9.8.2017, which had attained finality. The very conduct of the petitioner herein for not approaching the court with clean hand is enough for this Court not to interfere. Even otherwise, there is no explanation forthcoming as to why the petitioner did not challenge the order dated 9.8.2017, whereby his application for setting aside the ex-parte order dated 28.10.2014 stood dismissed. As stated above, this order had attained finality and the second application filed concealing these facts would not be maintainable.

Consequently, this petition is dismissed being devoid of any merit.

2.3.2020
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No