

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

Sr. No.108

CR-1829-2021 (O&M)
Date of decision : 09.11.2021

Ramandeep Sharma

..... Petitioner

VERSUS

Mamta and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Ramender Chauhan, Advocate, for the petitioner.

SUDHIR MITTAL, J. (Oral)

The petitioner is the husband. He has sought divorce on the ground of adultery. During the pendency of the divorce petition, respondent-wife has filed an application under Section 24 of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act) for grant of maintenance pendente lite. The application has been allowed. The Principal Judge, Family Court, Hisar, has ordered payment of maintenance pendente lite to the tune of Rs.6,000/- per month and litigation expenses of Rs.11,000/-. It has been stated that no evidence regarding the income of the petitioner-husband is available and thus, the minimum possible maintenance is being awarded.

Learned counsel for the petitioner has submitted that Section 125 (5) Cr.P.C prohibits award of maintenance to a woman who is living in adultery. Since, divorce is being sought on the ground of adultery, the Family Court was in error in allowing the application for maintenance pandente lite.

The argument is totally mis-conceived. Section 125 (5) Cr.P.C. states that an order for payment of maintenance under the provision of Section 125 Cr.P.C. shall be cancelled, in case, it is proved that the wife is living in adultery or is refusing to live with the husband without sufficient cause or they are living separately by mutual consent. Since, it has not been proven as yet that the wife is living in adultery, the argument does not arise. Section 125 (5) Cr.P.C. is not attracted. Moreover, even the principle enshrined in the said provision cannot be relied upon as Section 24 of the Act does not contain any such bar.

In view of above, the revision petition has no merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

09.11.2021
Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No