

CRR(F)-403-2021

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

CRR(F)-403-2021

Date of Decision: 02.11.2021

ANJU AND OTHERS

... PETITIONERS

VS.

ARVIND KUMAR

.. RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr. Prikshit Yadav, Advocate, for the petitioners.

VIVEK PURI, J.

The matter has been taken up through video-conferencing due to COVID-19 pandemic.

The petitioners have assailed the impugned judgment/order dated 03.08.2021 passed by the learned Principal Judge, Family Court, Rewari, vide which the application under Section 125 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been dismissed.

The petitioners had instituted the application under Section 125 Cr.P.C. for enforcement of their claim for maintenance on the ground that the marriage of petitioner No.1 was solemnized with the respondent on 18.05.2013. Petitioners No. 2 and 3 were born on 08.03.2014 and 27.12.2015, respectively.

Petitioner No.1 was harassed by the respondent and his family members on account of demand of dowry and was turned out of the matrimonial house. The respondent is serving in a private company as Supervisor and earning Rs.22,000/- per month.

The respondent has resisted the claim of the petitioners on the score that petitioners No. 1 and 3 are getting maintenance *pendente lite* to

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the tune of Rs.4,000/- in the divorce proceedings. Petitioner No.2 is living with the respondent. Petitioner No.1 has deserted and neglected the respondent and petitioner No.2. She has concealed the material facts from the Court. The fact of birth of a female child i.e. petitioner No.2 from the wedlock has been admitted. Petitioner No.1 lived with the respondent upto 14.10.2014 and petitioner No.3 is an illegitimate child.

Both the parties had adduced rival evidence and on appraisal thereof, application under Section 125 Cr.P.C. has been dismissed.

Learned counsel for the petitioners has been heard.

The relationship of petitioner No.1 with the respondent has not been disputed. Admittedly, their marriage was solemnized. It has also not been disputed that a female child i.e. petitioner No.2 was born from the wedlock. It has been conceded that at present petitioner No.2 is residing with the respondent.

The claim of petitioners No. 1 and 3 for maintenance has been declined primarily on the score that petitioner No.1 was living in adultery and petitioner No.3 has not been born out of the cohabitation of petitioner No.1 and the respondent. Consequently, it was held that they are not entitled to maintenance.

To arrive at the aforesaid conclusion, the learned Court below had primarily relied upon DNA profiling report Ex.RW1/A. The observations as recorded in the impugned order with regard to DNA profiling is as follows:-

“The Autosomal STR analysis proves that the DNA profile of baby of Anju (Source of item No.2) matches with the DNA profile of Anju (Source of item no.1) and does not match with the DNA

profile of Arvind Kumar (source of item no.3). ”

As such, it is evident that the DNA profile of son of petitioner No.1 had not matched with the DNA profile of the respondent. In such circumstances, no error can be found with regard to the observations of the Court below that petitioner No.3 has not been born from the cohabitation of petitioner No.1 and respondent and furthermore, petitioner No.1 was living in adultery. The conclusion arrived by the Court below is based upon convincing and reliable scientific evidence.

Section 125 (4) Cr.P.C. provides as follows:-

“No Wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may by,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.”

On the facts and circumstances as emerging in the instant case, it emanates that the wife was living in adultery and petitioner No.3 can not be termed to be legitimate or illegitimate child of the respondent to fasten him with the liability to maintain him.

In these set of circumstances, no illegality or irregularity is made out in the impugned order declining the claim of maintenance which may warrant any interference by this Court.

Dismissed.

02.11.2021
smriti

(VIVEK PURI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No