

108

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

CRR(F)-416-2020

Date of Decision: 05.01.2021

Vijay

.. Petitioner

Vs.

Suman Lata and another

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Dinesh Arora, Advocate for the petitioner.

...

Manoj Bajaj, J. (Oral)

Vijay-petitioner has filed this revision petition to challenge the order dated 03.02.2020 passed by the Principal District Judge, Family Court, Bhiwani, whereby his objection/application for recalling of conditional warrant of arrest was dismissed and the petitioner has been directed to pay the maintenance to the respondents awarded under Section 125 Cr.P.C.

The facts pleaded in the petition are that the respondent No.1 (Suman Lata) solemnized her second marriage with the petitioner on 23.07.2007 and soon after the marriage, the petitioner noticed her indecent behaviour, and his wife disclosed that she was not happy with the marriage. The couple was blessed with a daughter on 26.11.2009. As per the pleadings, the respondent No.1 left the matrimonial house and filed a complainant against the petitioner on 10.12.2013, however, as the allegations were baseless, so no action was taken on the said complaint by the Senior Superintendent of Police, Bhiwani.

The respondent No.1 filed a petition under Section 125 Cr.P.C. before the District Judge (Family Court), Bhiwani on 09.01.2014 against the petitioner and claimed maintenance @ Rs.25,000/- per month. The Family Court vide ex parte order dated 16.11.2015 (Annexure P-1) accepted the prayer and directed the petitioner to pay a sum of Rs.4,000/- per month to the respondents (Rs.2500/- for respondent No.1 and Rs.1500/- for respondent No.2) towards maintenance from the date of filing of the petition.

Apart from this, another petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 was filed by the respondent No.1 against her husband and alleged that he treated her with cruelty. The said petition was finally dismissed vide order dated 28.02.2018 (Annexure P-2), and aggrieved against the said decision, she filed a Criminal Appeal bearing No.114/2018, but the same was withdrawn by her on 19.08.2019 (Annexure P-3) on the basis of the compromise.

According to the petitioner, he had also filed a petition for dissolution of marriage against respondent No.1 on 04.09.2015, however the same was dismissed in default on 26.02.2016. As per pleadings, the maintenance amount awarded under Section 125 Cr.P.C. was later on enhanced through order dated 02.03.2019 (Annexure P-4), however in an attempt to resolve the dispute, the parties started residing together, but could not stay for long and they decided to separate. Later, a written compromise was executed on 01.10.2019 between the parties and a sum of Rs.7 lakhs was paid to the wife towards permanent alimony, and they also decided to dissolve the marriage by filing a petition on the basis of mutual consent. A copy of compromise is (Annexure P-5).

During the pendency of the execution proceedings under Section 125 Cr.P.C., the Court issued conditional warrants against the petitioner for non-payment of the maintenance amount and he was produced by police before the Court on 18.11.2019. It was at this stage, the petitioner filed his application/objection for recalling of the conditional warrants of arrest on the basis of the compromise dated 01.10.2019, which was dismissed by the Family court, Bhiwani vide impugned order dated 03.02.2020.

Learned counsel for the petitioner has invited the attention of the Court to the compromise dated 01.10.2019 to contend that once the dispute is amicably settled and a sum of Rs.7 lakhs has been paid in cash to the wife, the continuation of execution proceedings under Section 125 Cr.P.C. are meaningless. According to him, the Court has committed a serious error in law in rejecting his objections. Learned counsel has also drawn the attention of the Court to the order dated 19.08.2019 (Annexure P-3) and contended that on the basis of the compromise, respondent No.1 on 19.08.2019 withdrew her appeal against the order dated 28.02.2018. He submits that it is the wife who has retracted from the compromise after obtaining the permanent alimony from him and therefore, the interference is warranted by this Court.

During the course of hearing, it is not disputed by the learned counsel for the petitioner that the objections were contested by the wife by filing a reply, but the copy of the reply is not attached with the petition. During the hearing, learned counsel has produced the copy of the reply filed by the wife, wherein it is specifically mentioned that the alleged compromise is a result of fraud and her signatures have been forged. In the

reply, it is further mentioned that pursuant to the conditional warrants, the petitioner was produced before the Court on 18.11.2019, but instead of setting up the alleged compromise dated 01.10.2019, on the said date, he deposited Rs.20,000/- towards arrears of maintenance.

After hearing the learned counsel for the petitioner, this Court finds that the order dated 16.11.2015 (Annexure P-1) was never challenged by the petitioner and the objections were filed during the pendency of the execution proceedings. The impugned order is interlocutory in nature and, therefore, the present revision petition is not maintainable in view of Section 397(2) Cr.P.C.

Even otherwise on merits also, admittedly the marriage between the parties has not been dissolved, as the petition for divorce brought by the petitioner stood dismissed on 26.02.2016, therefore, in law, he is bound to pay the maintenance to the wife and the child. The petition is founded on the sole ground of compromise allegedly arrived at between the parties on 01.10.2019, however the same has been set up only during the execution proceedings. The respondents have raised a specific defence that the compromise set up by the petitioner is forged and fabricated and the trial Court has also carefully examined the stand of the parties and proceeded to discard the same by assigning probable reasons. The arguments of the learned counsel are that the compromise by the wife was also pleaded when she withdraw her appeal against the dismissal of the petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005, but as per the statement of the wife, she withdrew the appeal on the ground that the parties have decided to live together, whereas the compromise relied upon by the petitioner is all together different.

In view of the above, this Court does not find any merit in this petition and the same is dismissed.

05.01.2021	(MANOJ BAJAJ)	
Jasmine Kaur	JUDGE	
Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No