

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

**CRM-15741-2022 in/and
CRM-M-1780-2018
Date of decision : 04.08.2022**

Ashwani Kumar

.....Petitioner

versus

Kumari Yamini

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Chander Hans Yadav, Advocate
for the petitioner.

RAJESH BHARDWAJ, J. (Oral)

CRM-15741-2022

This application under Order 9 Rule 4 read with Section 151 CPC has been filed by the petitioner for restoration of the case which was dismissed for non-prosecution on 06.12.2018.

It has been contended by counsel for the petitioner that the petitioner had filed the accompanying petition impugning the order dated 05.11.2016.

On 18.01.2018 when the case came up for hearing, Hon'ble Bench asked the petitioner to brought instructions with regard to the amount paid after the enhancement of the maintenance and the matter was adjourned for 08.03.2018. Thereafter, the petitioner sought the time for the compliance of the said order. However, on the adjourned date, the petitioner failed to note the date fixed in the case and hence, the same was dismissed for non-prosecution.

Learned counsel for the petitioner submits that it was totally unintentional and petitioner would suffer an irreparable loss and injury if the same is not restored and heard on merits.

The Court has heard counsel for the petitioner and perused the record.

In view of the submissions made by counsel for the petitioner and in the interest of justice, the case is restored to its original number and taken on board today itself.

Application stands allowed.

CRM-M-1780-2018

This petition has been filed praying for quashing the order dated 05.11.2016 passed by the Judicial Magistrate Ist Class, Narnaul vide which the maintenance allowance has been enhanced from Rs.2,000/- to Rs.6,000/- ignoring the fact that the petitioner is unemployed and has no source of income and also quashing the impugned judgment/order dated 06.06.2017 passed by learned Sessions Judge, Narnaul vide which the criminal revision filed by the petitioner against the order dated 05.11.2016 has been dismissed.

Learned counsel for the petitioner has submitted that learned Family Court has fallen in error in passing the impugned order dated 05.11.2016 whereby the maintenance granted to the respondent has been enhanced from Rs.2,000/- per month to Rs.6,000/- per month. He submits that the petitioner got married with Sunita on 15.11.2008 as per Hindu Rites & Ceremonies. Out of the wedlock, respondent-minor daughter namely Yamini was born on 20.08.2009. After the marriage, wife of the petitioner started pressurizing the petitioner for living separately from his parents. Despite best efforts, she did not cooperate and remained adamant on her demand. Petitioner filed petition under Section 13 of the Hindu Marriage Act for dissolution of marriage and the same was accepted

ex parte by the learned Sessions Judge on 19.01.2010. Thereafter Sunita wife of Kumari Yamini, minor daughter of petitioner filed petition under Section 125 Cr.P.C. and vide order dated 15.06.2015 maintenance allowance of Rs.5,000/- was awarded in favour of both of them. He submits that respondent filed petition under Section 127 Cr.P.C. which has been allowed vide order dated 05.11.2016 and the amount of Rs.2,000/- per month awarded previously has been enhanced to Rs.6,000/- per month. The Court below has failed to appreciate that the wife of the petitioner and mother of respondent is working in Anganwadi Kendra and drawing salary of Rs.20,000/- per month and she is able bodied person to maintain herself as well as her minor daughter i.e. the respondent. On the other hand, the petitioner is unemployed and has no source of income. Thus, the Court below has failed to appreciate all these facts and passed the order enhancing maintenance from Rs.2,000/- per month to Rs.6,000/- per month and thus, drawn a wrong conclusion. He submits that the Court below have not appreciated the cogent evidence led by the petitioner and has wrongly relied upon the contention of the respondent that the petitioner is B.Sc & B.Ed and earning Rs.26,000/- per month while working as a Teacher in a private school. He has submitted that in view of the facts, the order under challenge is liable to be *set aside*.

Learned Judicial Magistrate Ist Class, Narnaul enhanced the same to Rs.6,000/- per month to be received by the mother of the respondent-minor vide its order dated 05.11.2016. Aggrieved by the same, the petitioner-father challenged the same by way of filing the revision petition before the learned Sessions Judge, Narnaul. However, learned Sessions Judge found no infirmity in the same and thus, upheld

the order dated 05.11.2016 passed by the learned Judicial Magistrate Ist Class, Narnaul. Aggrieved by both these orders, the petitioner has approached this Court praying for setting aside the same.

Heard.

After hearing counsel for the petitioner and perusing the record, it is apparent that the respondent-minor filed an application under Section 127 Cr.P.C. for alteration of the order of maintenance dated 15.06.2013 vide which maintenance at the rate of Rs.2,000/- per month was granted to the minor.

The respondent is none other than the minor-daughter of the petitioner. In the attending facts and circumstances, the maintenance of Rs.2,000/- per month was granted by the Family Court. However, in the changed circumstances, the same was found to be too meager and enhanced to Rs.6,000/- per month. This petition has been filed by the petitioner in 2018 and thereafter, it was dismissed for non-prosecution as well. The provisions of Section 125 Cr.P.C. are for preventing the destitution and vagrancy. The proceedings are summary in nature. The petitioner is able bodied man and being father of the respondent, is legally bound to look after his daughter.

There is a concurrent finding against the petitioner by both the Courts below. Keeping in view the facts and circumstances of the case, this Court finds no infirmity in the view taken by the Court below. Hence, the petition being devoid of any merits is hereby dismissed.

04.08.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No