

In the High Court for the States of Punjab and Haryana at
Chandigarh

CRR(F)-384-2021 (O&M)

Date of Decision: September 19, 2022

Amit Kumar Yadav

... Petitioner

Versus

Suman Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Kanhiya Soni, Advocate,
for the petitioner.

Mr. Vivek Khatri, Advocate,
for the respondents.

Vivek Puri, J.

CRM-35273-2022

This is an application for placing on record
certified copy of interim orders passed by the court of
learned Principal Judge, Family Court, Rewari (Annexure
P-7).

Annexure P-7 is taken on record.

Application stands disposed of.

CRR(F)-384-2021

The petitioner has assailed the order dated
08.10.2021 passed by the Court of learned Principal Judge,
Family Court, Rewari, vide which the application for

additional evidence filed on behalf of the petitioner-husband has been dismissed.

The respondent no.1-wife has instituted a petition under Section 125 of the Code of Criminal Procedure (for short 'the Code') for self and on behalf of three minor children alleging that her marriage was solemnized with the petitioner on 29.04.2004. The petitioner has refused and neglected to maintain the respondents.

The petitioner has resisted the petition, inter alia, on the score that the respondent no.1 was having adulterous relationship and has admitted this aspect in terms of the writing dated 19.05.2005. He has even sought to dispute the paternity of the respondents no.2 to 4.

After the conclusion of the evidence of the petitioner, he had moved an application for additional evidence for examining a handwriting expert to prove the aforesaid writing. The application has been resisted by the respondents. It has been alleged that the aforesaid document was well within the knowledge of the petitioner and in his custody. He has been given sufficient opportunity to produce evidence and has intentionally and deliberately moved the present application at a belated stage to fill up the lacuna in the case.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner contends that in terms of the writing dated 19.05.2005, the respondent no.1 has admitted the fact that she was carrying pregnancy, the child in the womb does not belong to the petitioner, the same belongs to some one from her village Bapas and she wants to abort the child of her own wish. It has been further submitted that during the course of her cross-examination, the respondent no.1 has denied the fact of such writing. The petitioner now intends to prove the writing by examining a handwriting expert.

On the contrary, learned counsel for the respondents has argued that though the respondent no.1 is disputing the execution of any such writing, but the same was allegedly executed as back as on 19.05.2005 i.e. about a period of 12 years prior to the institution of the petition under Section 125 of the Code. Even subsequent to the said alleged writing, the petitioner and respondent no.1 had been co-habiting and three children have been born from the wedlock on 23.08.2006, 03.08.2008 and 24.04.2017. The allegations with regard to adultery are stale and the subsequent events indicate that the said alleged act has been condoned by the petitioner. The petitioner was well aware of his pleaded case, which he was required to prove during the course of evidence. No reasonable ground is

made out which prevented the petitioner from producing the proposed evidence, while he was leading his evidence.

It has not been disputed that the petition under Section 125 of the Code was instituted on 06.07.2017. The cross-examination of the respondent no.1 was conducted on 03.06.2019 and 04.06.2019. The evidence of the respondents was closed on 20.07.2019 and the case was adjourned to 25.07.2019 for evidence of the petitioner. The respondent no.1 had closed the evidence on 20.07.2019 and subsequently, the present application for additional evidence has been moved.

The material on record is indicative of the fact that the petitioner was well within the knowledge of the alleged writing which was executed as back as on 19.05.2005. Even a specific plea in this regard has been raised in the reply submitted by the petitioner to the main petition to dispute the claim of the respondents for maintenance. The petitioner has also sought to cross-examine the respondent no.1 on this aspect of the matter, but she had denied the execution of the writing. In such circumstances, the petitioner was well aware of the case, which he was required to prove and establish to dispute the claim of the respondents for maintenance. It shall not be out of place to mention here that in his zeal to dispute the claim of the respondents for maintenance, he has gone to the

extent of disputing the paternity of the three children, who have born from the wedlock during the period of cohabitation. One of the children was born only 2-1/2 months prior to the institution of the petition.

Although, a discretion is vested in the trial Court to act as the exigencies of justice and circumstances of the case may require to permit a party to lead additional evidence, but the same must appear to be essential for the just decision of the case. However, it has also to be borne in mind that such power cannot be exercised to permit any of the parties to fill up lacuna in its case. There must be sufficient and reasonable material to justify for exercise of the discretionary powers vested in the Court.

In the instant case, no justified reason is made out, which prevented the petitioner to initiate the exercise of proving the writing by examining a handwriting expert, particularly because the respondent no.1 during her cross-examination had denied the execution thereof. The petitioner has displayed inaction for a period of two years, when the case was pending in the trial Court for his evidence.

It shall not be out of place to mention here that Section 125 of the Code is meant to achieve a social purpose. It is a piece of social legislation, which provides for

summary and speedy relief by way of maintenance to the wife, who is unable to maintain herself and her children.

The matter is to be viewed from another angle also. Section 125(4) of the Code provides as following:-

“125(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be], 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.”

The maintenance can be declined, in the event, it is proved and established that the wife is living in adultery. “Living in adultery” means a continued adulterous conduct and not a single or occasional lapse. Solitary act of adultery or on isolated lapse of wife, will not disentitle the wife to claim the maintenance. The burden of proof of un-chastity is on the husband. Unless it is found that at the relevant point of time, the wife was actually living in adultery, she is not disentitled to claim maintenance. The material on record must indicate that the wife was living in adultery shortly before or after the petition of maintenance has been instituted. It is not the case of the petitioner that shortly prior to the institution of the petition or subsequent thereto, the respondent no.1 is continuously living in adulterous life.

The course of adulterous conduct must not be a matter of

past, but must be continuing at the time of presentation of the petition. The stale alleged act of adultery is indicative of the fact that such act has been condoned and consequently, the allegation to the effect that the respondent no.1 was living in adulterous life way back in the year 2005 cannot be termed to be a circumstance, which may be significant enough to dispute the claim of the respondents to claim maintenance from the petitioner. This is also a significant circumstance which indicate that the proposed evidence is not essential to decide the controversy.

In these circumstances, no illegality or irregularity is made out in the impugned order passed by the Court below, which may call for interference by this Court.

Instant petition is dismissed, accordingly.

September 19, 2022
vk

(Vivek Puri)
Judge

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