

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

135

CRR (F)-931-2022 (O & M)

Date of decision :-29.11.2022

Naveen

...Petitioner

Versus

Sarita and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Jitender Malik, Advocate for the petitioner.

SUVIR SEHGAL, J.

CRM-37901-2022

For the reasons given in the application, it is allowed.

Delay of 38 days in the filing of the petition is condoned.

Main Case

By way of present revision petition, petitioner has approached this Court challenging order dated 24.05.2022 passed by learned Principal Judge, Family Court, Camp at Kanina, Mahendergarh whereby interim monthly maintenance of Rs.5000/- each has been awarded in favour of the respondents, besides, litigation expenses of Rs.5000/- under Section 125 of the Code of Criminal Procedure, 1973 (for short – “the Code”).

Counsel for the petitioner submits that the earlier petition preferred by the respondents under Section 125 of the Code, was withdrawn by respondent No.1 vide order dated 13.07.2019, Annexure P-1/B, after a settlement dated 13.02.2019, Annexure P-1/C, was arrived at between the parties. He submits that even the proceedings initiated by her under the Protection of Women from Domestic Violence Act, 2005 were closed by her

in view of the compromise. He submits that a fresh petition is barred by the principle of res judicata. Counsel submits that despite the settlement, respondent No.1 did not return to her matrimonial home, rather she lodged false criminal cases against the petitioner and his relatives, besides, filing a fresh petition under Section 125 of the Code. He submits that the Family Court has erred in overlooking the previous litigation between the parties while passing the impugned order.

I have heard counsel for the petitioner and examined the material placed on record.

Insofar as the applicability of the doctrine of res judicata is concerned, it deserves to be noticed that the earlier application filed by respondent No.1 under Section 125 of the Code was withdrawn as the matrimonial dispute was settled between the parties. However, it has been categorically pleaded by respondent No.1 that despite the settlement, the petitioner and his relatives did not desist from harassing her. A specific incident of 01.03.2021 has been mentioned where petitioner and his family members physically assaulted respondent No.1 and she was turned out of the matrimonial home. She has averred that her relatives were attacked by the petitioner. A complaint has been given by her in Police Station, Manesar and FIR No.63 dated 04.03.2021 has been lodged for offences under Sections 147, 148, 149, 323, 506 IPC, before a fresh application has been filed claiming maintenance. A conjoint reading of Sections 125 and 127 of the Code shows that ensuing application is maintainable in the changed circumstances. This Court, therefore, has no hesitation in coming to the conclusion that the present petition, which has been filed 1½ years after the withdrawal of the first petition, has been instituted in view of the subsequent developments, cannot be held to be not maintainable.

A criminal case stands registered against the petitioner and other accused for causing injuries and intimidating respondent No.1 and her relatives. Charge has been framed against them. Respondent No.1, therefore, cannot be said to have deserted the petitioner rather she has been turned out and compelled to stay separately from her husband. It is her specific case that she does not have any source of income and has been left in a state of destitution where she is dependent upon her, parental family for her child’s expenses. Although the petitioner has levelled counter allegations against the petitioner but the same will be examined by the Family Court after the parties have adduced evidence. There is nothing on record to show that the petitioner has any physical disaffirmity and is not in a position to earn. It is the social, moral and legal responsibility of the husband to look after his wife and minor child and he cannot avoid this obligation.

In this background, the award of interim monthly maintenance in favour of the respondents cannot be said to be excessive. There is no merit in the petition, which is hereby dismissed.

It is clarified that nothing said hereinabove shall be construed to be an expression on the merits of the case, which shall be decided by the Family Court, on the basis of the evidence lead before it.

29.11.2022
sheetal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No