

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M 5149/2021

Date of decision: 19.07.2023.

Jasbir Singh

.....Petitioner

Vs.

Paramjit Kaur and another

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vivek Salathia, Advocate for the petitioner.

None for respondents 1 and 2 despite service.

Nidhi Gupta, J.

Prayer in the present petition is for quashing the order dated 7.3.2020 (Annexure P-6) passed by Addl. Sessions Judge, Amritsar vide which petitioner has been directed to pay the entire sum of interim maintenance under Section 125 Cr.PC qua respondents No. 1 and 2 as a condition precedent for hearing the revision petition bearing CRR-475/2018 dated 31.10.2018 titled "Jasbir Singh v Paramjit Kaur and another" (Annexure P-4), filed by the petitioner against the order dated 13.9.2018 (Annexure P-3) passed by Id. ACJM, Amritsar granting interim maintenance of Rs.15,000/- each to respondent no.1 wife and respondent no.2 major daughter, besides litigation expenses of Rs.20,000/- in case no.88 of 2018 titled as "Paramjit Kaur and others v Jasbir Singh". Further prayer is for staying the operation of the order dated 13.9.2018 (Annexure P-3).

It is submitted by Id. Counsel for the petitioner that the order dated 13.9.2018 (Annexure P-3) was challenged by the petitioner by way of revision before the Court of Sessions Judge, Amritsar inter alia on the ground that respondent no.2 being major daughter was not entitled to maintenance under Section 125 Cr.PC. It is submitted that in the meantime respondents filed an application (Annexure P-5) before the Id. Addl. Sessions Judge, Amritsar seeking a direction to the petitioner for depositing the entire arrears of interim maintenance upto the date of filing of revision petition. It is submitted that it is on this application that the Id. Addl. Sessions Judge has passed the impugned order dated 7.3.2020 (Annexure P-6) directing that “.... *Since, this revision is against the interim maintenance, awarded to the respondent, so, petitioner is supposed to pay the interim maintenance amount. Only then, he can argue. Therefore, he is directed to come for arguments after clearing all the dues.*”

Learned counsel for the petitioner vehemently submits that the impugned direction of the Id. Court below is in the teeth of the judgment of the Hon’ble Supreme Court in "**Abhilasha vs. Parkash and others**" 2020 (4) RCR (Crl.) 141, wherein it has been held that an adult unmarried daughter is not entitled to any maintenance under the provisions of Section 125 of the Cr.P.C., though she may be entitled to such maintenance under the provisions of Section 20(3) of the Hindu Adoption and Maintenance Act, 1956.

Learned counsel draws attention to the questions of law formulated by the Supreme Court in the said case, in paragraph 7, which reads as follows:-

“7. From the submissions of the learned counsel for the parties, following two questions arise for consideration in this appeal:-

(i) Whether the appellant, who although had attained majority and is still unmarried is entitled to claim maintenance from her father in proceedings. under Section 125 Cr.P.C., 1973 although she is not suffering from any physical or mental abnormality/injury?

(ii) Whether the orders passed by learned Judicial Magistrate as well as learned Revisional Court limiting the claim of the appellant to claim maintenance till she attains majority on 26.04.2005 deserves to be set aside with direction to the respondent No.1 to continue to give maintenance even after 26.04.2005 till the appellant remains unmarried?"

Ld. Counsel further refers to paragraphs 35 and 38 of the said judgment, which read as follows:-

“35. The maintenance as contemplated under Act, 1956 is a larger concept as compared to concept of maintenance under Section 125 Cr.P.C., 1973 Section 3(b) while defining maintenance gives an inclusive definition including marriage expenses in following words:-

"3. Definitions- In this Act unless the context otherwise requires-

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b) "Maintenance" includes-

(i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment;

(ii) in the case of an unmarried daughter also the reasonable expenses of and incident to her marriage;

(c) "minor" means a person who has not completed his or her age of eighteen years."

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38. We, thus, accept the submission of the learned counsel for the appellant that as a proposition of law, an unmarried Hindu daughter can claim maintenance from her father till she is married relying on Section 20(3) of the Act, 1956, provided she pleads and proves that she is unable to maintain herself, for enforcement of which right her application/suit has to be under Section 20 of Act, 1956.”

Ld. Counsel submits that therefore, in view of the clear legal position as noted above, not only is Annexure P-3 fallacious, but the revisional court was in patent error in directing the petitioner to pay the entire amount of interim maintenance as a condition precedent to hearing the revision petition. Ld. Counsel further submits that however, in the meantime, the petitioner has been duly paying Rs.15,000/- to the respondent-wife regularly as directed

vide order dated 13.9.2018 (Annexure P-3), and there are no arrears of interim maintenance in respect of the respondent No.1 herein.

I have heard Id. Counsel for the petitioner.

Vide order dated 22.2.2021 this Court had stayed the operation of the impugned order Annexure P-6. Further, Respondents were served as far back as on 30.4.2021. Despite that none has put in appearance on their behalf. Accordingly, matter is being heard and decided in their absence.

In my view, without commenting on the merits of the matter, apropos of the facts and legal position as noticed hereinabove, the impugned order dated 7.3.2020 (Annexure P-6) is set aside and the Id. Revisional Court/ the Id. Addl. Sessions Judge, Amritsar is directed to decide the Revision Petition bearing CRR-475/2018 dated 31.10.2018 titled “Jasbir Singh v Paramjit Kaur and another” (Annexure P-4), on merits. However, in the meantime, during pendency of the revision petition the petitioner shall continue to pay interim maintenance to the respondent-wife as held by Id. ACJM vide order dated 13.9.2018 (Annexure P-3).

Petition stands disposed of in above terms.

19.07.2023.
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No