

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

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**CRR(F) No.208 of 2014
Date of decision: 06.12.2023
Reserved on: 30.11.2023**

Rajesh

... Petitioner

Vs.

Mrs. Neelam and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Rajesh Malik, Advocate,
for the petitioner.

MANISHA BATRA, J.

1. The present revision petition has been filed by the petitioner challenging the order dated 19.08.2014 passed by learned District Judge, Family Court, Faridabad in Petition No.169 of 2010 titled as *Mrs. Neelam and others v. Rajesh* filed under Section 125 of Code of Criminal Procedure whereby maintenance to the tune of Rs.3000/- per month was directed to be paid by the petitioner to respondent No.1 wife whereas the minor respondents No.2 and 3 were directed to be paid a sum of Rs.1000/- per month each.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the respondent No.1 Neelam for herself as well as on behalf of the respondents No.2 and 3 filed the aforementioned petition

under Section 125 of Cr.P.C. seeking maintenance from the present petitioner who is her husband, by pleading that she along with her children had been thrown out of her matrimonial house by the petitioner and was dependent upon her parents and was living with them. While claiming that the petitioner was working as a machine operator with one M/s A.P. Engineers at Faridabad and was earning a sum of Rs.10,000/- per month and alleging that he had neglected and refused to maintain the present respondents, who were unable to maintain themselves, she prayed for directing him to pay maintenance.

3. The petitioner had resisted the claim of the present respondents by filing reply. The parties had led evidence and after considering the contentions respectively raised by their counsel and appraising the evidence produced on record, the learned District Judge, Family Court, Faridabad vide order dated 19.08.2014, allowed the petition and directed the present petitioner to pay maintenance to the present respondents to the extent of amount as mentioned above.

4. It was argued by learned counsel for the petitioner that the impugned order was not sustainable in the eyes of law. The learned District Judge had gravely erred in giving direction to him for making payment of maintenance to the present respondents as he had already paid an amount of Rs.20,000/- towards permanent alimony to the respondent No.1. She had undertaken that in lieu thereof she would not claim any maintenance in future from him for herself or on behalf of the minor respondents. He argued that the respondent No.1 had backed out

from the undertaking so given before the Court in proceedings seeking decree of divorce, by withdrawing her consent and no decree of divorce could be passed in favour of the petitioner but nonetheless she was bound by the statement that she had received permanent alimony and would not be entitled to make any claim in future. He argued that evidence to this effect had been produced by the petitioner before the learned Family Court and arguments were also raised on that point. However, the learned Family Court did not consider this fact and hence he urged that the impugned order was not sustainable and was liable to be set aside.

5. It will not be out of place to mention here that though service of notice was duly effected upon the respondents through ordinary process as well as by way of publication in the newspapers but none appeared on their behalf before this Court.

6. I have given due deliberations to the contentions as raised by learned counsel for the petitioner and have carefully perused the material placed on record.

7. The petitioner has placed on record a copy of statement shown to be jointly recorded by the present petitioner and the respondent No.1 on 03.11.2009 in petition bearing No.1353 of 2009 titled as *Rajesh and Smt. Neelam* filed under Section 13-B of Hindu Marriage Act, 1955. A perusal of the contents of the same reveals that the petitioner as well as the respondent No.1 had recorded a joint statement to the effect that they had decided to get their marriage dissolved by way of decree of divorce by mutual consent. The respondent No.1 had recorded that she had

received all her belongings, dowry articles, istridhan etc. and a sum of Rs.20,000/- towards permanent alimony and henceforth she would have no claim whatsoever against the present petitioner. The parties had also agreed that custody of the minor respondents would remain with the respondent No.1 and she would not claim any maintenance from the present petitioner on their behalf as well. This statement had been recorded at the time of first motion. The petitioner has also placed on record a copy of order dated 01.06.2010 subsequently passed in the same petition and a perusal of the same shows that the present respondent No.1 had withdrawn her consent at the time of second motion due to which the petition seeking divorce jointly filed by the petitioner and respondent No.1 was ordered to be dismissed as withdrawn.

8. In the wake of the factual situation as mentioned above, the core question that arises before this Court is that whether the statement dated 03.11.2009 as recorded by the respondent No.1 in the divorce petition, qua receipt of an amount of Rs.20,000/- towards permanent alimony and relinquishing her future claim for seeking any maintenance for herself as well as the minor respondent estops her from making any further claim for grant of maintenance for herself as well as for the minor respondents and as to what is the effect of this statement. The well settled proposition of law is that when consent of one of the parties to joint petition for divorce by mutual consent has not been obtained by force, fraud or undue influence and still one of the parties withdraws such consent at the stage of second motion, then the Court cannot be a helpless

spectator to the chicanery and duplicity of the withdrawing party who induced the other party and duped him into agreeing to part with money on the pretext that it will be towards permanent alimony. The respondent No.1 has not come forward before this Court to contest this petition. It stands proved from her statement dated 03.11.2009 that the petitioner had paid a sum of Rs.20,000/- to the respondent No.1 as permanent alimony for herself as well as the minor respondents. She subsequently made significant departure from the statement recorded at the time of first motion as on 03.11.2009 and withdrew her consent. Having gained an advantage of Rs.20,000/- on the pretext of agreeing for divorce, the respondent No.1 could not keep the said amount once she withdrew the consent for mutual divorce. She was either liable to return the said amount or to seek divorce as otherwise sanctity and very purpose of her making statement on oath in the Court stood eroded. However, she did not do so.

9. While passing the impugned order, the learned Family Court did not consider the evidence produced on record by the petitioner on this point in a proper perspective and directed him to pay maintenance to respondent No.1. In the opinion of this Court, when the respondent No.1 had received permanent alimony way back in the year 2009 from the petitioner then irrespective of the fact that she had withdrawn her consent for grant of a decree of divorce, she could not be allowed to wriggle out of the effect of the statement recorded by her on 03.11.2009 especially in the circumstance when she had received the relief qua claim of payment

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of permanent alimony without any contest on the basis of terms of the settlement which had been arrived at between the petitioner and herself while filing petition for passing a decree for divorce by way of mutual consent. Taking the entire act and conduct of the respondent No.1 into consideration, this Court is of the considered opinion that the impugned order is not sustainable to the extent to which the respondent No.1 had been directed to be paid maintenance to the tune of Rs.3000/- per month by the petitioner. However, so far as the direction given to the petitioner for making payment of maintenance to the tune of Rs.1000/- per month each to the minor respondents is concerned, this Court finds that no interference is required to be made in the same as the receipt of amount of Rs.20,000/- by respondent No.1 towards permanent alimony could not be considered to be binding upon the minor respondents.

10. With these observations, the petition is partly allowed and the impugned order is set aside to the extent to which direction was given to the petitioner to pay maintenance to respondent No.1. However, it shall sustain to the extent to which direction had been given to the petitioner to make payment of maintenance to the tune of Rs.1000/- to the minor respondents till they attained majority.

06.12.2023
manju

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No