

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR-F-871-2023 (O&M)

Date of order: 18.08.2023

Pooja

.....Petitioner(s)

Vs.

Vishal

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Mukesh Mehra, Advocate
for the petitioner.

Nidhi Gupta, J.

Challenge in the present petition is to order dated 25.01.2023 passed by learned Principal Judge (Family Courts), Rohtak whereby application filed by the petitioner under Section 125 of Cr.P.C. has been dismissed.

2. Learned counsel for the petitioner-wife submits that the petitioner was married to the respondent on 18.11.2015. No child was born out of this wedlock. They have been living separately since 2017. It is submitted that the petitioner is unable to maintain herself as she does not have any resources and therefore, the respondent is obliged under law to maintain the petitioner. It is further submitted that the respondent is earning Rs.60,000/- per month.

3. No other argument is raised on behalf of the petitioner.

4. I have heard learned counsel for the petitioner.

5. Perusal of the impugned order reveals that the respondent-husband had filed a petition under Section 9 of Hindu Marriage Act on 23.07.2018 seeking restitution of conjugal rights. The said petition was decreed vide order dated 01.10.2018 on basis of a settlement that was entered into between the parties as per which the petitioner was to join the company of the respondent. However, thereafter, despite the settlement and the decree the petitioner did not join the company of the respondent. It has also come on record that the petitioner has admitted in her testimony that she did not join the company of the respondent as the respondent had told her that he was unemployed. However, it is admitted that the petitioner had entered into the settlement of her own free will.

6. Following findings of the learned Family Court are relevant and are reproduced hereinbelow:-

“19. At the outset I may observe that it is no more res-integra that provision of Section 125 Cr.P.C. is a form of social legislation which has been enacted to prevent vagrancy and destitution of wives, children and parents who are unable to maintain themselves.

*20. It is also noteworthy that in **Sunita Kachwaha and others Versus Anil Kachwaha, 2014 (4) R.C.R. (Criminal) 831 Supreme Court of India**, the Hon’ble Apex Court held that proceedings under Section 125 Cr.P.C. are summary in nature and in said proceedings it is not necessary for the Court to go into minute details of matrimonial dispute between the parties and to ascertain who was wrong or right.*

21. It is further pertinent to note that parties are not at lis regarding the fact that respondent filed a petition under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights before competent Court at Delhi wherein a

settlement was effected as per which parties were to reside together in a rented accommodation with effect from 17.10.2018, statements of parties regarding the compromise was recorded and the petition was disposed of as compromised settled vide order dated 01.10.2018 which is Ex.D5.

22. It is also relevant to note that certified copy of statement of petitioner in above-mentioned case is Ex.D4. It is further significant to note that undisputedly the petitioner did not join the company of respondent in pursuance of the compromise referred above and accordingly the parties did not live together at any time after 01.10.2018. It is also important to note that plea of petitioner that she did not join the company of respondent despite suffering statement Ex.D4 and passing of order Ex.D5 because respondent told him that he was having no employment, is not tenable as petitioner did not apply for modification of the order Ex.D5. Moreover, it was the responsibility of respondent-husband to maintain the petitioner in the matrimonial home and when the parties did not live together, no inference can be raised that respondent was not in a position to fulfil the basic necessities of petitioner. At this juncture, it may be also be observed that even if it is believed for the sake of arguments that respondent and his family treated the petitioner with cruelty on previous occasions, the act and conduct of petitioner in arriving at a compromise and agreeing to live with respondent with effect from 17.10.2018 amounts to condonation of said acts of cruelty by petitioner. In these peculiar facts and circumstances of the case, I am of the considered opinion that petitioner is living separately from respondent without any reasonable cause. Resultantly, petitioner is not entitled for any maintenance from the respondent as per provisions of Section 125(4) Cr.P.C. which reads as under:-

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.”

7. Learned counsel for the petitioner is unable to deny the above said findings or show anything to this Court to controvert the same. Accordingly, I am in concurrence with the above said reasoning and findings of the Trial Court.

8. It has further come on record that the petitioner is well qualified as she has done MCA and prior to her marriage, she was working as a Teacher. The petitioner in her cross-examination has admitted this fact that she has done MCA.

9. Though the petitioner has not disclosed before this Court that she has done MCA and is well qualified, however, her admission to the said fact is recorded in the impugned order. It is therefore clear that the petitioner can earn and maintain herself. In this regard, reliance may be placed on the judgment of Karnataka High Court in **“Shilpashree J.M. Vs. Gurumanjunatha A.S” 2023 SCC Online Kar 36**, wherein it has been held that wife cannot sit idle and seek entire maintenance from estranged husband. This Court is compelled to observe that it is the equal duty of the wife to maintain herself, especially if she is well qualified, as in the present case. Relevant part of said judgment is reproduced hereinbelow:-

“...there is no explanation as to why she is incapable of working now. She is not supposed to sit idle and seek entire maintenance from her husband and she is also legally bound to make some efforts to meet her livelihood”

10.. In view of the above discussion, I find no error in the impugned order. Present petition accordingly stands **dismissed**.

11. Pending application(s) if any also stand(s) disposed of.

18.08.2023
Sunena

(Nidhi Gupta)
Judge

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