

In the High Court of Punjab and Haryana at Chandigarh
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2023:PHHC:079363

CRR(F)- 299 of 2016

Date of Decision: 31.05.2023

Rekha Rani

---Petitioner

versus

Eugin Jackab

---Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Harinder Singh Sandhu, Advocate
for the petitioner

Mr. Sushant Kareer, Advocate
for the respondent

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through the instant petition is seeking setting aside of order dated 29.07.2016 whereby Family Court has dismissed petition of the petitioner under Section 125 Cr.P.C. seeking maintenance from respondent.

2. Learned counsel for the parties are *ad idem* that Family Court has passed impugned order on the sole ground that petitioner was already married when she solemnized marriage with respondent herein and she could not produce decree of divorce, thus, she was not entitled to maintenance in terms of Section 125 Cr.P.C.

3. Learned counsel for the petitioner drew attention of this Court to decree of divorce dated 20.09.2005 whereby Additional

District Judge, Ambala, has ordered to dissolve marriage of the petitioner with Karan Kumar son of Balkrishan i.e. previous husband of the petitioner.

4. Learned counsel for the respondent submits that petitioner did not produce aforesaid decree of divorce despite repeated opportunities, thus, petitioner be burdened with costs.

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

6. From the perusal of impugned order, it is quite evident that Family Court has dismissed petition of the petitioner on the sole ground that petitioner does not appear to be legally wedded wife of the respondent because she had entered into second marriage without obtaining divorce from her previous husband. Marriage of the petitioner stood dissolved vide decree dated 20.09.2005 passed by Additional District Judge, Ambala, thus, it is factually incorrect that petitioner was already married when she performed marriage with the respondent. There is nothing on record disclosing whether aforesaid decree dated 20.09.2005 was assailed before Appellate Court or not.

7. In view of the aforesaid facts and circumstances, this Court finds it appropriate to set aside impugned order dated 29.07.2016. Accordingly, the petition is allowed and impugned order is set aside with a direction to Family Court to pass afresh order after considering decree of divorce dated 20.09.2005 passed by Additional District Judge, Ambala and ascertaining present status of said decree.

8. The petitioner despite opportunities did not produce

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aforesaid decree before Family Court which led to passing of impugned order. The petitioner deserves to be burdened with costs. Accordingly, the petitioner is burdened with costs of Rs. 25,000/- which would be deducted from maintenance, if any, granted to her.

(JAGMOHAN BANSAL)
JUDGE

31.05.2023

paramjit

Whether speaking/reasoned : Yes

Whether reportable : Yes/No