

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

228

CRR(F)-316-2018

Date of Decision : 10.05.2023

Harpyari

..... Petitioner

Versus

Rajbir

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Ashish Pandey, Advocate for
Mr. Rohit Rana, Advocate
for the petitioner.

Mr. Jashan Singh Sekhon, Advocate for
Mr. Shiv Kumar, Advocate
for the respondent.

JAGMOHAN BANSAL, J. (Oral)

The petitioner through instant petition is seeking setting aside of order dated 30.01.2018 whereby Additional Principal Judge, Family Court, Faridabad has dismissed application of the petitioner under Section 125 Cr.P.C. seeking maintenance from the respondent.

The petitioner preferred a petition under Section 125 Cr.P.C. before Family Court at Faridabad seeking maintenance from the respondent. The petitioner as well respondent led evidence in support of their contentions. The prime contention of the respondent was that the petitioner is not legally wedded wife of the respondent, thus, in terms of Section 125 Cr.P.C., she is not entitled to maintenance. The petitioner claimed maintenance claiming herself legally wedded wife of the respondent. The matter came up for consideration before Additional Principal Judge, Family

Court, Faridabad who vide impugned order dated 30.01.2018 dismissed

claim of the petitioner on the ground that the petitioner has failed to prove divorce from her previous husband, thus, she cannot be called as legally wedded wife of the respondent,

Learned counsel for the petitioner *inter alia* contends that the petitioner and respondent were cohabiting for quite long time, thus, the petitioner was entitled to maintenance in terms of Section 125 Cr.P.C.

Learned counsel for the respondent submits that the petitioner has never pleaded before trial Court or in the petition filed before this Court that she was in live-in-relation with the respondent. The petitioner was claiming herself legally wedded wife of the respondent, thus, at this belated stage, her claim on the basis of presumption that she was living with respondent in live-in-relation is not maintainable.

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

The Family Court has rejected claim of the petitioner on the ground that the petitioner was legally wedded wife of another person. She is claiming that she had obtained divorce from her husband whereas despite repeated opportunities, she has failed to lead any evidence vindicating her stand that she had already got divorced from her husband. The Family Court has further held that Section 5(1) read with Section 11 of HMA provides that while subsisting first marriage, second marriage is void. The maintenance under Section 125 Cr.P.C. can be granted to a legally wedded wife.

Learned counsel for the petitioner does not dispute the factual position that there is no evidence of divorce from first marriage and further there is no evidence of second marriage, however, learned counsel submits

that petitioner and respondent were cohabiting for quite long time, thus, they were in live-in-relation. The petitioner has not raised this argument either before Family Court or in the petition filed before this Court. To claim maintenance, on the basis of live-in-relation, is one aspect and to claim maintenance on the basis of marriage is another aspect. Both aspects are mutually exclusive. A married person cannot claim that he is living in live-in-relation. A person who is living-in-relation cannot claim rights arising out of marriage even though in the present changed scenario, few rights are created on the basis of live-in-relation. As the petitioner while filing petition under Section 125 Cr.P.C. before the Family Court has projected herself wife of the respondent, she, at this stage, cannot take somersault and claim that she was putting with respondent in live-in-relation.

In view of above facts and circumstances, this Court does not find any ground to interfere in the impugned order.

Dismissed.

(JAGMOHAN BANSAL)
JUDGE

10.05.2023
anju

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>