

CRR(F)-18-2019

Date of decision: 30.04.2024

VANSHIKA MINOR

...PETITIONER

V/S

PRASHANT GOYAL

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Deepak Girhotra, Advocate
for the petitioner.

None for respondent.

HARPREET SINGH BRAR J. (ORAL)

1. The present revision petition has been preferred against the impugned order dated 21.11.2018 passed by learned Sessions Judge (Family Court), Rohtak under Section 125 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), vide which the maintenance of Rs.4,000/- per month was awarded to be paid to the petitioner.

2. The marriage between the respondent and one Preeti i.e. mother of respondent was solemnized on 03.12.2010 according to Hindu rites and rituals. Out of this wedlock, one female child, namely, Vanshika (petitioner herein) was born. However, matrimonial dispute ensued between the couple and the petitioner filed a petition under Section 125 Cr.P.C. seeking maintenance. The respondent filed a reply and contested the claim made by the petitioner. The learned Family Court vide order dated 21.11.2018 granted maintenance allowance of Rs.4,000/- per month in favour of the petitioner. Aggrieved by the same, the petitioner has approached this Court by filing the present petition.

3. Learned counsel for the petitioner *inter alia* contends that the

petitioner is the minor daughter of the respondent and is currently residing with her mother, who is already contributing her share by taking care of her daily needs. The respondent has neglected his legal duty to maintain the petitioner even though, he has sufficient means to do so. The learned Court below has granted a meagre amount of Rs.4,000/- per month as maintenance to the petitioner, however, which is inadequate to meet the expenditure of the petitioner.

4. The office report indicates that respondent has been duly served, however, there is no representation on his behalf. As such, this Court has no other option except to proceed with the case on its own merits.

5. Having heard learned counsel for the petitioner and after perusing the record with his able assistance, it transpires that the respondent is an LIC agent and has earned a gross commission of Rs.4,78,225/- for the financial year 2014-15 (Ex.P-2) and Rs.3,51,912/- for the financial year 2015-16 (Ex.P-3). It is duly proved on record that the other members of the family are also receiving a handsome amount as commission. As such, this Court finds that the amount of maintenance granted by the learned Family Court is not in consonance with the actual income of the respondent. Considering the respondent's gross earnings in the year 2014-15, it can be reasonably assumed that he is drawing at least Rs.40,000/- per month as salary.

6. A two-Judge Bench of the Hon'ble Supreme Court in ***Kirtikant D. Vadodaria v. State of Gujarat (1996) 4 SCC 479***, speaking through Justice Faizan Uddin, opined as follows:

“15. ... While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support.

The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation.”

7. A Co-ordinate bench of this Court in ***Khursheed Ahmad v. Smt. Zakira, 2007(3) CCC 363***, has held that the minor children cannot be barred from claiming maintenance under Section 125 Cr.P.C. if a decree for restitution of conjugal rights has been passed against the wife, which has attained finality. The rights of the children qua maintenance are independent of the proceedings against the wife. This view was reaffirmed by another Co-ordinate bench of this Court ***Nirmal Singh v. Gurvinder Kaur and others, 2008(3) CCC 236*** wherein it was held that the father cannot be allowed to shrug off his responsibility to maintain his children citing the compromise arrived at with the wife. Speaking through Justice R.S. Madan, the following was observed”

“8. I have perused the compromise (Ex.C1) today produced before me by the learned counsel for the petitioner. It nowhere reflects that respondent No. 3 has accepted the maintenance amount in full and final settlement on behalf of respondents No. 1 and 2 also. The receipt attached with Exhibit CI reflects that a lump-sum amount of Rs. 70,000/- was accepted by respondent No. 3 as her past as well as future maintenance at the time of disposal of Hindu Marriage petition. It is a case where respondents No. 1 and 2 were not party in the Hindu Marriage petition. No interim maintenance was allowed to them in that petition. It is not the case of the petitioner that a petition under Section 26 of the Hindu Marriage Act was filed wherein any interim maintenance was fixed for the children. In the absence thereof also, statement of wife Manjit Kaur is of no value that she will maintain and educate the minor children.

9. The question of grant of maintenance of the children is governed by the statutes under the The Hindu Adoptions & Maintenance Act, 1956. The plea of the petitioner is falsified from the receipt which forms part of compromise, Ex.CI, which shows that no maintenance was ever accepted by their mother Manjit Kaur on their behalf. The question of making any statement by wife Manjit Kaur against the interest of the children is also not to be taken into account, unless a certificate is issued by a counsel representing the minors that the compromise is for the welfare of

the minors. Order 32 Rule 7 of the Code of Civil Procedure provides safeguard to the future interests of the minors.

10. In the absence of abovesaid statutory requirements as well as that respondents No. 1 and 2 are not the party in the Hindu Marriage petition, the statement made by Manjit Kaur (respondent No. 3) has rightly been not taken into consideration by the learned Magistrate while fixing the interim maintenance under Section 125 Criminal Procedure Code The present proceedings cannot be quashed for the simple reason that the wife has made a statement in a Hindu Marriage Act case that she would provide education and maintenance to the children. The petitioner is father of respondents No. 1 and 2 and cannot take the benefit from the statement of respondent No. 3 Manjit Kaur and wriggle out of his responsibility to maintain his legitimate children. The petitioner and respondent No. 3 after taking divorce are living separately with their respective spouses and children are living at the mercy of their grand-maternal parents.”

8. In view of the discussion above, this Court is of the considered opinion that the respondent cannot be allowed to shrug off his moral and legal duty to maintain his minor daughter. Accordingly, the present petition is allowed and the impugned order is modified to the extent that the petitioner is entitled to an amount of Rs.10,000/- per month towards her maintenance from the date of order instead of Rs.4,000/-.

April 30, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No