

Date of decision: 23.04.2024

....Petitioner

...Respondents

Mr. Gautam Diwan, Advocate
for the respondents.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition is preferred seeking setting aside of impugned order dated 21.09.2021 passed by learned Additional Principal Judge, Family Court, Gurugram, whereby, respondent No.2 was granted Rs.10,000/- per month as maintenance under Section 125 Cr.P.C.
2. Briefly, the facts are that the marriage between the petitioner and respondent No.1 was solemnised on 07.12.2001 as per Sikh rites and rituals and one female child, namely, Mehak Birgi-respondent no.2, was born out of this wedlock. However, there were temperamental differences between the petitioner and respondent No.1 and on account of the same, both of them started living separately and respondent no. 2 is currently residing with her mother- Namrata Birgi-respondent No.1.
3. Learned counsel for the petitioner *inter alia* contends that respondent No.1 is working in the K.R.Mangalam World School and drawing a

salary of Rs.30,000 to Rs.40,000/- per month and further submitted that respondents have concealed the factum of transfer of 100% share of his belonging and one FDR of Rs.22 lakh to respondent No.2 and also the fact that huge amounts had already been paid by him for sustenance of the respondents and thus, they are not entitled to any maintenance under Section 125 Cr.P.C. Counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court in 'Ajay Kumar Rathee Vs. Seema Rathee' 2022 (2) RCR (Civil) 487 decided on 10.03.2022.

4. Having heard the learned counsel for the petitioner and after perusing the record of the case with his able assistance, it transpires that it is the daughter-respondent No.2 of the petitioner who has been granted Rs.10,000/- as maintenance vide impugned order dated 21.09.2021.

5. A two Judge bench of the Hon'ble Supreme Court in ***Nagendrappa Natikar v. Neelamma, 2013(2) RCR (Criminal) 424*** has held that even though the wife has accepted permanent alimony under Section 125 Cr.P.C. the remedy available to her under the Hindu Adoption and Maintenance Act, 1956 will not be foreclosed. Speaking through Justice K.S. Radhakrishnan, the following was observed:

“10. Section 125 Criminal Procedure Code is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children. Section 125 is not intended to provide for a full and final determination of the status and personal rights of parties, which is in the nature of a civil proceeding, though are governed by the provisions of the Criminal Procedure Code and the order made under Section 125 Criminal Procedure Code is tentative and is subject to final determination of the rights in a civil court.”

6. 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.”

7. In view of the discussion above, this Court is of the considered opinion that the petitioner is duty bound to maintain respondent No.2-his daughter. At this stage the impugned order dated 21.09.2021 vide which the interim maintenance of Rs.10,000/- per month under Section 125 Cr.P.C. has been challenged cannot be interfered with since the parties are yet to prove their respective claims by adducing evidence. Therefore, the present petition is dismissed being bereft of any merit.

8. Pending miscellaneous application(s), if any, also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

23.04.2024

Neha

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