

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

135

CRM-M-5842-2024 (O&M)

Date of decision: 05.02.2024

Kamlesh & Another

...Petitioner(s)

Vs.

Shiv Kant

...Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Ajay Jain, Advocate
for the petitioners.

Mr. Aditya Sanghi, Advocate
for the respondent.

NIDHI GUPTA, J.

Present petition under Section 482 Cr.P.C. has been filed by the petitioners, who are the wife and minor child, seeking setting aside of order dated 25.01.2024 passed by the learned Principal Judge, Family Court, Rewari in CRM-288-2022 whereby in a petition filed by the respondent-husband under Section 127 Cr.P.C. titled as “Shiv Kant Vs. Kamlesh & Another”, the evidence of the petitioners has been closed.

2. Learned counsel for the petitioners inter alia submits that petitioner No.1 was married to the respondent on 16.02.2010 and they have been living separately since February, 2016. Petitioner No.1/wife had filed an application under Section 125 Cr.P.C. wherein learned Principal Judge, Family Court, Rewari vide order dated 16.11.2021, had assessed income of the respondent as Rs.1,17,440/-, and had accordingly, directed

the respondent to pay maintenance of Rs.40,000/- per month to the petitioners.

3. Thereafter, the respondent had filed an application under Section 127 Cr.P.C. (Annexure P-1), stating therein that he had left his job and was now getting a salary of Rs.96,750/- per month, and therefore praying that the maintenance as granted vide order dated 16.11.2021, be reassessed. Upon notice, the petitioners had appeared and contested the said application filed by the respondent stating that there had been no change in circumstance. In the said matter the evidence of the respondent was closed on 10.08.2023 and the same was adjourned to 17.08.2023, for evidence of the petitioners.

4. Learned counsel for the petitioners submits that thereafter, petitioner No.1/wife filed applications dated 17.08.2023 (Annexure P3) and 02.11.2023 (Annexure P4), for summoning of the witnesses as named and mentioned in the said applications; and even the diet money for summoning of the said witnesses was duly deposited by the petitioner. It is stated that however, vide the impugned order dated 25.01.2024 evidence of the petitioners has been closed. Learned counsel refers to the Zimini orders enumerated in para 6 of the petition to submit that perusal of the same shows that there has been no delay occasioned on part of the petitioners.

5. Learned counsel further submits that from the impugned order it appears that the reason for closing the petitioners' evidence is that the Family Court has been influenced by the fact that no

court process had been proved to be issued by the petitioners for summoning of the witnesses i.e. it is not clear as to whether witnesses had really been served with summons or not. Learned counsel submits that however, in the written submissions dated 25.1.2024 filed by the petitioners, it was categorically brought to the notice of the court that despite sincere efforts of the petitioners by depositing diet money, and summoning the witnesses through registered post within time, as also submitting the tracking report in respect thereof, the summoned witnesses were not appearing in court on the date fixed and therefore, it was prayed therein that the presence of the witnesses be secured through bailable warrant or some other prescribed mode as deemed fit by the court. It is prayed by learned counsel for the petitioners that in the circumstances, the petitioner No.1 be granted one effective opportunity to examine the witnesses mentioned in the applications (Annexure P3) and (Annexure P4); and that the presence of the said witnesses be secured through court process.

6. Mr. Aditya Sanghi, Advocate puts in appearance on behalf of the respondent and files Memorandum of Appearance, which is taken on record. Learned counsel for the respondent submits that he has “no objection” if the aforesaid prayer made by learned counsel for the petitioners for grant of one effective opportunity to lead evidence, is allowed.

7. In view of the above, the present petition is disposed of with a direction to the concerned Court below that the petitioners be

granted one effective opportunity to examine the witnesses mentioned in the applications Annexure P3 and Annexure P4, who are to be summoned through Court process, subject to payment of Rs.5,000/- as costs to be paid by petitioner No.1 to the respondent-husband.

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

05.02.2023

Sunena

(Nidhi Gupta)
Judge

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