



215

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-204-2024 (O&M)
Date of decision: 25.09.2024

Sonia and others

... Petitioners

Vs.

Sonu

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Nitin Kadian, Advocate for
Mr. Yashveer Kharb, Advocate
for the petitioners.

Mr. Naveen Siwach, Advocate for
Mr. J.S. Saneta, Advocate
for the respondent.

HARPREET SINGH BRAR, J. (ORAL)

1. Present revision petition has been preferred against the impugned order dated 31.10.2023 passed by learned Principal Judge, Family Court, Panipat, in the proceedings initiated under Section 125 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), vide which interim maintenance of Rs.1,500/- per month each was awarded to be paid to

2024:PHHC:127280



petitioners No.2 to 4.

2. The marriage between petitioner No.1 and the respondent was solemnized on 05.05.2006 according to Hindu rites and rituals. Out of this wedlock, three children i.e. petitioners No.2 to 4 were born. However, matrimonial dispute ensued between the couple and the petitioners filed an application under Section 125 Cr.P.C. seeking interim maintenance. The respondent filed a reply and contested the claim made by the petitioners. Learned Family Court, vide impugned order dated 31.10.2023, while declining to grant interim maintenance to petitioner No.1, as she has already received permanent alimony, granted interim maintenance allowance of Rs.1,500/- per month each in favour of petitioners No.2 to 4. Aggrieved by the same, the petitioners have approached this Court for enhancement of the amount of interim maintenance, by filing the present petition.

3. Learned counsel for the petitioners, *inter alia*, contends that learned Family Court fell into grave error, by awarding very meager amount of interim maintenance of Rs.1,500/- per month each to petitioners No.2 to 4, which is not in consonance with actual income of the respondent and it is insufficient to fulfill the basis requirements of petitioners No.2 to 4. The respondent is earning very handsome income. As such, amount of interim maintenance awarded by learned Family Court in favour of petitioners No.2 to 4 be enhanced to some higher amount.

2024:PHHC:127280



4. Learned counsel for the respondent submits that after taking divorce by way of mutual consent, the respondent is living separately from the petitioners and he has already paid permanent alimony to petitioner No.1 and is not liable to further maintain the petitioners. As such, the impugned order dated 31.10.2023 passed by learned Family Court is liable to be set aside.

5. I heard learned counsel for the parties and perused the record of the case with their able assistance.

6. A two Judge bench of the Hon'ble Supreme Court in ***Nagendrappa Natikar Vs. 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.”

7. A Co-ordinate Bench of this Court in ***Khursheed Ahmad Vs. Smt. Zakira, 2007(3) CCC 363***, has held that the minor children cannot be

2024:PHHC:127280



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 Coordinate Bench of this Court ***Nirmal Singh Vs. 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.

2024:PHHC:127280



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*

2024:PHHC:127280



spouses and children are living at the mercy of their grand-maternal parents.”

8. Evidently, petitioner No.1 and the respondent have been granted divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955 and she has received permanent alimony. This Court is of the considered opinion that the mere fact of petitioner No.1 being mother of petitioners No.2 to 4 accepting any alimony or permanent settlement, does not free the respondent-father from his duty to maintain the children. Any permanent alimony being granted to petitioner No.1 would not preclude the children from claiming maintenance under Section 125 Cr.P.C.

9. At this stage, only interim maintenance has been awarded by learned Family Court, which is subject to adjustment at the time of final disposal and the parties are yet to prove their respective claims by adducing the evidence. Further, a perusal of the impugned order passed by learned Family Court makes it evident that learned Family Court granted maintenance to petitioners No.2 to 4, without obtaining the affidavits of the parties regarding their assets, income and liabilities, as per the directions issued by the Hon'ble Supreme Court in ***Rajnish Vs. Neha and another, (2021) 2 SCC 324.***

9. In view of the facts and circumstances of the case, present petition is disposed of. The impugned order dated 31.10.2023 is hereby set

2024:PHHC:127280



aside and the matter is remanded back to learned Family Court with the direction to pass a fresh order strictly keeping in view the guidelines issued by the Hon’ble Apex Court in **Rajnesh**’s case (*supra*), after obtaining the affidavit of the parties regarding their assets, income and liabilities.

10. Till the fresh decision, the respondent will continue to pay the interim maintenance of Rs.1,500/- per month each awarded to petitioners No.2 to 4 by learned Family Court timely.

11. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and learned Family Court shall proceed without being prejudiced by observations of this Court.

25.09.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No