

Sr.No.127

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

CRM-M-10776-2023(O&M)

Reserved on:19.01.2024

Date of decision:25.01.2024

Sahoon

.....Petitioner

Versus

Farzeena and others

.....Respondents

CORAM: Hon'ble Ms. Justice Harpreet Kaur Jeewan

Present: Mr. Saurav Bhatia, Advocate
for the petitioner.

Harpreet Kaur Jeewan, J.(Oral)**CRM-2365-2024**

By this application, the applicant-petitioner seeks permission to place on record an affidavit of the petitioner in compliance of the order dated 26.04.2023 passed by the co-ordinate Bench of this Court.

The application is allowed and the aforesaid affidavit is ordered to be taken on record subject to all just exceptions with the accompanying petition. Office to tag the same at appropriate place.

CRM-M-10776-2023(O&M)

1. Prayer in the present petition filed under Section 482 Cr.P.C. is for quashing of order dated 11.01.2023 (Annexure P-5) passed by the Principal Judge Family Court, Nuh passed in Complaint No.36 of 2016 whereby the application of the petitioner for setting aside the *ex parte* order dated 25.05.2017 (Annexure P-2) and judgment dated 24.01.2019 (Annexure P-3) *ex parte* allowing the petition

under Section 125 of Code of Criminal Procedure, 1973 (for short 'the Code') have been dismissed.

2. As per the facts on record, the respondents (wife and minor children) filed a petition under Section 125 of the Code against the petitioner seeking grant of maintenance with the contentions that marriage between the petitioner and respondent No.1 was solemnized in the year 2009 as per Muslim rites. Petitioner-husband was not happy with the articles given in the dowry. During the wedlock, a male child was born. In April 2013, the respondent No.1-wife was thrown out of the matrimonial home and she filed a complaint in the Women Cell, Nuh. However, on 05.11.2013 the matter was compromised by the parties and respondent was taken back in her matrimonial home. After two-three months again the petitioner No.1 was thrown out of her matrimonial home. The petitioner No.2 gave birth to another male child in the year 2014. Again by raising the demand of dowry petitioner No.2 was sent out of her matrimonial home alongwith the two children. Thereafter, a panchayat meeting was convened on 25.10.2015, wherein the petitioner-husband refused to keep the respondents with him. Hence petition for grant of maintenance was filed by respondents under Section 125 of the Code.

2.1. As per the order dated 25.05.2017 (Annexure P-2), the petitioner-husband was proceeded against *ex parte* by SDJM in the said petition filed by the respondents. Eventually, vide order dated 24.01.2019 (Annexure P-3) the said petition was allowed *ex parte* and the petitioner was directed to pay a sum of Rs.4,000/- per month to all the respondents.

2.2. As per order dated 11.01.2023 (Annexure P-5) passed by the Principal Judge, Family Court, Nuh, the application filed by the petitioner for

setting aside the *ex parte* order dated 25.05.2017 (Annexure P-2) and judgment dated 24.01.2019 (Annexure P-3) was dismissed. As such the impugned order dated 24.01.2019 (Annexure P-3) for dismissal of the said application has been challenged in the present petition filed under Section 482 of the Code.

3. Learned counsel for the petitioner *inter alia* contends that the order dated 25.05.2017 is not legally sustainable. The summons were never received by the petitioner as he was disowned by his family. As per reports on the summons, these were received by a women member of the family and the said receipt cannot be treated as service of the summons to the petitioner, which is in contravention to the provisions of Section 64 of the Code. As per Section 64 of the Code, the receipt of summons by some adult male member of the family can be presumed as service. It was contended that as per order dated 11.01.2023, summons dated 16.12.2016 were received by Asubi (mother of the petitioner) which cannot be treated as service of the petitioner. As such the order to proceed the petitioner *ex parte* and subsequent orders are liable to be set aside. Petitioner is ready to join the proceedings and contest the petition filed by the respondents under Section 125 of the Code.

4. I have considered the said contentions.

5. As per order dated 26.04.2023 passed by the co-ordinate Bench, the petitioner was directed to file an affidavit with regard to the arrears of maintenance; and with the detail, if any amount has been paid by him. In compliance with the said order, the petitioner has filed an affidavit, as per which he has not paid any maintenance to the respondents. It has been alleged that he remained in custody for a period of 1 month. He is not having any property in his

name and is unemployed, as such he could not pay any maintenance to the respondents.

6. The present petition has been filed in February 2023. As per the contentions of the respondent-wife, many Panchayats were convened before she approached the Court. The petitioner is having two minor children and the respondent-wife is residing separately having the responsibility of two minor children since September, 2015 i.e. for a period of more than 8 years. The impugned order was passed on 24.01.2019 (Annexure P-3) whereby a meager amount of Rs.4,000/- was granted to the respondents as maintenance for his wife and minor children. The petitioner has not paid any amount for the last 8 years to the respondents. The marriage between the petitioner and respondent No.1 is not disputed. The paternity of respondents No.2 and 3 is also not disputed. In the affidavit filed by the petitioner, he has not shown any inclination to pay any maintenance to the respondents. The equity is not in favour of the petitioner. The petitioner has not shown his bonafide.

7. The provision of Section 482 Cr.P.C are the inherent powers of this Court to make such orders as may be necessary to give effect to any order under this Court or to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Keeping in view the facts and circumstances of this case, as the purpose of Section 482 Cr.P.C is to prevent the abuse of process of any Court, or otherwise to secure the ends of justice; the equity is not in favour of the petitioner. He has not shown bonafide, as such, it is not a case to exercise inherent powers under Section 482 Cr.P.C. Consequently, no ground is made out for interference

8. The present petition stands dismissed.

9. Pending application, if any, shall also stand disposed of.

25th January, 2024
Shivani Kaushik

[HARPREET KAUR JEEWAN]
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No