

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

115

CRR-F-478-2024(O&M)

Date of order: 08.04.2024

Jaspal Singh

.....Petitioner(s)

Vs.

Manjit Kaur & Another

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Ashdeep Singh, Advocate
for the petitioner.

Nidhi Gupta, J.

Prayer in the present petition is for setting aside order dated 12.03.2024 passed by learned Additional Principal Judge, Family Court, Camp Court, Malerkotla, whereby the application/objections dated 13.02.2024 filed by the petitioner for recalling order dated 22.01.2024 has been dismissed; and for dismissal of application under Section 128 CR.P.C. filed by the respondents.

2. Learned counsel for the petitioner-husband inter alia submits that the petitioner was married to respondent No.1 on 05.10.2008. One son/respondent No.2 herein was born out of this wedlock on 21.01.2011. It is submitted that due to marital discord, respondent No.1 left the matrimonial home in 2015. Thereafter, respondent No.1/wife filed petition under Section 125 Cr.P.C. which was allowed by learned Sub-Divisional Judicial Magistrate, Malerkotla vide order dated 12.12.2016 (Annexure P1), whereby the petitioner was directed to pay maintenance

allowance of Rs.5,000/- per month to respondent No.1/wife and Rs.2,000/- per month to respondent No.2/minor son.

3. The respondents then moved an application dated 03.01.2017 (Annexure P2) under Section 128 Cr.P.C. for recovery of arrears of maintenance. During pendency of this petition, a compromise was arrived at between the parties, whereby it was decided to get the marriage dissolved by filing petition under Section 13-B of Hindu Marriage Act, 1955. Subsequently, decree of divorce dated 14.05.2019 (Annexure P6) was passed by learned Additional District Judge, Fatehgarh Sahib. Learned counsel submits that in the above said proceeding, in the second motion statement made by respondent no.1 she had categorically undertaken that she would not make any further claims against the petitioner. Ld. counsel refers to the said second motion statement dated 13.05.2019 (Annexure P4) made by respondent No.1 in the petition under Section 13-B Hindu Marriage Act, 1955, which is reproduced hereinbelow:-

“.....The matter regarding permanent alimony and maintenance present, past and future of mine has been settled. I will not claim any maintenance amount which is outstanding in case filed under section 125 Cr.P.C pending in at Malerkotla. I am bound to withdraw my above said application under section 128 Cr.P.C, but said Presiding officer of the Court of SDJM Malerkotla District Sangrur is on leave and as much I am unable to withdraw my above said application under 128 Cr.PC at that time, but I bound to withdraw the same in future after completion of the Leave period of said Presiding officer....”.

4. Learned counsel contends that accordingly, in view of the above statement of respondent No.1, the respondents are not entitled

for maintenance under section 125 CRPC. Moreover, as per the above statement, respondent No.1 was required to withdraw the petition under Section 128 Cr.P.C. However, respondent No.1 has failed to do so. Even an affidavit dated 13.05.2019 (Annexure P5) to this effect was given by respondent No.1. Thereafter, divorce was granted to the parties vide decree dated 14.05.2019. However, respondent No.1 has failed to withdraw the above said petition under Section 128 Cr.P.C.

5. It is submitted that now the learned Executing Court vide order dated 22.01.2024 (Annexure P7) has issued conditional warrants of the petitioner. When the petitioner came to know of this order, he moved an application dated 13.02.2024 (Annexure P8), seeking recalling of order dated 22.01.2024 and for dismissal of the Execution Application as the matter already stood fully and finally settled and compromised. Learned counsel argues that all payments in accordance with settlement had been made to the respondents and therefore, nothing remained to be paid. It was respondent No.1 who had reneged and resiled from the compromise inasmuch as she had failed to withdraw her petition under Section 128 Cr.P.C. and therefore, she did not adhere to her undertaking. It is accordingly prayed that the impugned order be set aside, and the application of the respondents under section 128 CRPC be dismissed.

6. No other argument is made on behalf of the petitioner.

7. I have heard learned counsel for the petitioner and perused the case file in detail.

8. Perusal of record of the case shows that in response to the application dated 13.02.2024 (Annexure P8) filed by the petitioner for recalling order dated 22.01.2024 and seeking dismissal of the Execution Application, respondent No.1 had filed reply dated 26.02.2024 (Annexure P9) wherein in Para 2 thereof, she has stated as under:-

“That in reply to paragraph No.2 of the application it is submitted that vide order dated 22-01-2024 the conditional warrants of the respondent were issued by this Hon’ble court. It is strongly denied that the applicants have already received the entire maintenance as alleged. The applicant has not given up the claim of the minor in the divorce petition. However, the applicant No.1 does not claim any maintenance in the present case for herself and only claim maintenance amount for applicant No.2. The respondent has not paid a single penny to the applicant. Moreover, the applicant No.1 legally cannot relinquish the claim of minor applicant No.2 in any manner.”

9. In view of the above-pleaded stance of the respondent no.1, learned Additional Principal Judge, Family Court, Camp Court, Malerkotla in the impugned order dated 12.03.2024 ruled as under:-

“Even otherwise also, it is worthwhile to note that the minor child of the parties was never a party to the agreement between the husband-wife, as such it cannot be said that he has received any maintenance or monetary benefit at the time of culmination of divorce proceedings u/s 13-B of HMA. Therefore, under no stretch of legal implication, the minor child can be debarred from seeking maintenance under the provisions of Section 125 or 128 of CrPC. It goes without saying that provisions of Section 125 or 128 of CrPC constitute a beneficial piece of legislation children which entitles them to be legally maintained by the lawful father by claiming their legal right of maintenance and live with dignity without being compelled to lead a life of vagrancy and destitution.

As the result of the reasons cited supra, this Court is of the considered opinion that the present petition under Section 128 of CrPC on behalf of Harmanveer Singh is certainly maintainable under law. No legal grounds much less any

plausible reason is made out for dismissal of the present petition under Section 128 Of CrPC. As an upshot of the reasons and law cited supra, the application/objections so filed by the respondent are hereby declined being devoid of any merit.”

10. In passing the impugned order, learned Family Court has relied upon judgment of Hon’ble Supreme Court in **“Ganesh Vs. Sudhirkumar Shrivastava & Ors. Civil Appeal Nos.4031-4032 of 2019, date of decision 22.04.2019 Law Finder Doc ID # 1447501,** wherein it has been held that it is certainly open to the wife to give up any claim so far as maintenance or permanent alimony or istridhan but she could not have given up the rights which vest in the child insofar as maintenance and other issues are concerned.
11. Learned counsel for the petitioner is unable to controvert or dispute the above said factual and legal position.
12. As such, in view of the facts and legal position as noticed here in above, I find no ground is made out to interfere in the impugned order. Present petition is accordingly, **dismissed.**
13. Pending application(s) if any also stand(s) disposed of.

08.04.2024

Sunena

Whether speaking/reasoned

Whether reportable

(Nidhi Gupta)

Judge

Yes/No

9Yes/No