

Date of decision: 08.04.2024

....Petitioner

...Respondent

Present: Mr. Harmanpreet Singh Sehgal, Advocate
for the petitioner.

The present petition has been preferred against the impugned order dated 19.01.2024 in case No.MNT 125-101-2021 titled as 'Sharanjit Kaur Vs. Gurwinder Singh' passed by the learned Family Court, Camp Giddarbaha, under Section 125 of the Cr.P.C. vide which the interim maintenance of Rs. 12,000/- per month was awarded to the respondent/wife of the petitioner.

Brief facts of the case are that the marriage of the petitioner was solemnized in the year 1995 with one, Balwinder Kaur and out of this wedlock, one male child, namely, Rajdeep Singh, was born in the year 1996. It is further alleged that petitioner was in relation with the respondent prior to her first marriage and on asking of the respondent, both of them got a marriage certificate issued from Ganganagar (Rajasthan), wherein, the marital status of both the parties was mentioned as 'unmarried' in the said marriage certificate and despite the registration of this marriage, both the parties never resided together. Further, in the year 2009, both the parties filed a petition under

Section 13-B of the Hindu Marriage Act, 1955 on 19.01.2009 (Annexure P-1) for dissolution of marriage by way of decree of divorce by mutual consent before the Additional Civil Judge (SD), Giddarbaha, perusal of which would show that the respondent had already received a permanent alimony for her future maintenance from the petitioner but the respondent has filed a petition under Section 125 Cr.P.C. seeking maintenance of Rs.20,000/- per month. The petitioner filed a reply and contested the claim made by the respondent. The learned Family Court vide order dated 19.01.2024 granted interim maintenance allowance of Rs. 12,000/- per month in favour of the respondent/wife. Aggrieved by the same, the petitioner has approached this Court by filing the present petition.

Learned counsel for the petitioner *inter alia* contends that petitioner has taken a specific stand that in the year 2009 when divorce petition was filed under Section 13-B of the Hindu Marriage Act, 1955 by the petitioner, at the time of recording of the first motion statement, the respondent has received a permanent alimony of Rs.6,50,000/-. The petitioner has relied upon copy of the petition which is available on record as Annexure P-1 and also referred to the statement made by the respondent (Annexure P-2) on 20.01.2009 in which the respondent has clearly stated that she has received a lump sum amount for her future maintenance and now, nothing has to be received from the petitioner. He further submits that now the application under Section 125 Cr.P.C. has been filed after a gap of 10 years. The learned Court below has recorded the averment made by the petitioner with regard to the receipt of the permanent alimony by the respondent and has not returned any finding *qua* the same.

Having heard the learned counsel for the petitioner and after perusing the record with his able assistance, the present petition is being decided in *limine* in view of directions issued by the Hon'ble Supreme Court in '**Rajnish v. Neha and another**' (2021) 2 SCC 324, in order to save litigation cost of the respondent and judicial time of the Court.

In view of the facts and circumstances of the case, this Court finds force in the arguments advanced by learned counsel for the petitioner and is of the opinion that the learned Principal Judge, Family Court, Sri Muktsar Sahib, has not dealt with the specific condition raised by the petitioner in his reply filed before the Family Court to the application filed under Section 125 Cr.P.C. by the respondent.

In view of the above, the impugned order dated 19.01.2024 is hereby set aside and the matter is remanded back to the learned Principal Judge, Family Court Camp Giddarbaha Sri Muktsar Sahib, to decide the case afresh by taking into consideration the fact that the respondent has already received permanent alimony for her future maintenance in the year 2009.

The present petition stands disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

08.04.2024

Neha

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