

CRR-776-2007 (O&M)

- 1 -

101 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-776-2007 (O&M)

DATE OF DECISION : 05.07.2024

NEELAM

... PETITIONER

V/S

HIRA LAL AND ANOTHER

... RESPONDENTS

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: None for the petitioner.
Mr. Amrik Singh Narwal, D.A.G. Haryana.
Mr. Bhag Singh, Advocate for respondent No. 1.

* * * *

HARPREET KAUR JEEWAN, J.

1. Present Criminal Revision has been filed by petitioner-Neelam assailing the findings by the learned Addl. Sessions Judge, Ambala vide order dated 04.01.2007 whereby the Criminal Revision filed by respondent-husband was partly allowed and the order passed by learned Judicial Magistrate First Class, Ambala Cantt. granting maintenance to the petitioner was set aside. However, order granting maintenance to the child of petitioner @ Rs.1000/- per month was upheld.

2. As per the factual matrix, petitioner-Neelam (for short 'the petitioner') along with her son Bunty-respondent No.2 filed a petition under Section 125 Cr.P.C. against respondent No.1-Hira Lal (for short 'the respondent') for grant of maintenance. As per the pleadings of the petitioner, her marriage was solemnized with respondent No.1 in the year 1976 and out of the wedlock, a son was born, who was aged about 10 years at the time of filing of the said petition. The petitioner further alleged that

CRR-776-2007 (O&M)

- 2 -

respondent-husband is employed as a Special Ticket Examiner in the Northern Railway then posted at Kalka. The respondent solemnized 2nd marriage with one Vijay Kumari and concealed this fact from the petitioner-wife. Ultimately, on 04.05.1989, the petitioner was given severe beatings by the respondent and she was turned out of the matrimonial home along with her minor son. The salary of the respondent-husband was pleaded as Rs.4200/- p.m. and prayer was made for awarding maintenance @ Rs. 1500/- p.m.

3. The respondent contested the petition by taking various pleas. The relationship between the parties was denied. A specific plea was raised that respondent is married to one Vijay Kumari and even in the service record of the respondent, the name of Vijay Kumari is mentioned as his wife.

4. Both the parties adduced their evidence. The Area Magistrate after hearing the counsel for the parties and on appraisal of the evidence, concluded that petitioner is not the wife of the respondent. It was held that petitioner is married to Harbans Lal s/o Surja, resident of Village Arnecha, Tehsil Thanesar, District Kurukshetra and she is not the legally wedded wife of the respondent. However, the Area Magistrate observed that petitioner was living with the respondent and a son was born out of the said relationship. Accordingly, the Judicial Magistrate allowed the petition under Section 125 Cr.P.C. and granted maintenance to the petitioner as well as to her son Bunty-respondent No.2 @ Rs.1000/- p.m. each from the date of filing of the petition. It was further directed that the son of the petitioner

CRR-776-2007 (O&M)

- 3 -

(illegitimate son) would get maintenance till the date he attains the age of majority.

5. The respondent challenged the order passed by the Judicial Magistrate by way of filing a Criminal Revision which was partly accepted by the learned Addl. Sessions Judge, Ambala. It was observed that as per provisions of Section 125 Cr.P.C. only the wife besides children and parents are entitled to maintenance. It was also observed that the children include legitimate or illegitimate children. However, there is no provision in Section 125 Cr.P.C. to award the maintenance to illegitimate wife. The Revision petition was partly allowed and it was observed that petitioner is not entitled to any maintenance. However, the order of grant of maintenance qua the son of the petitioner namely Bunty-respondent No.2 was upheld.

6. The present Criminal Revision has been filed assailing the findings given by the learned Addl. Sessions Judge, Ambala vide impugned order of declining the maintenance to the petitioner.

7. None has appeared on behalf of petitioner-Neelam.

8. As per the paper-book, the presence of Mr. D.S. Marwaha, Advocate, has been shown in the order dated 03.05.2007 at the time when Revision petition was filed. Thereafter, on 20.09.2007 and 15.01.2008, there was no representation on behalf of the petitioner. The presence of Mr. D.S. Marwaha, Advocate, was marked as per the order dated 25.03.2008, apart from that there is no representation on behalf of the petitioner.

9. As per the office report, dated 30.08.2014, a letter issued to Sh. D.S. Marwaha, Advocate, was received back with the report that his name

CRR-776-2007 (O&M)

- 4 -

was not found in the Bar directory.

10. On 07.01.2015, Mr. A.S.Virk, Advocate appeared for the petitioner, but no power of attorney was filed. On 27.05.2024, there was no representation on behalf of the parties, however, even today, there is no representation on behalf of the petitioner.

11. In view of the aforesaid facts and circumstances, I have perused the paper-book with the assistance of learned counsel appearing for the respondent.

12. In the absence of any evidence regarding a legal and valid marriage *inter se* the petitioner and the respondent, the learned Addl. Sessions Judge has rightly declined to grant maintenance to the petitioner while upholding the order regarding grant of maintenance to the son of the petitioner. The provisions of Section 125 reads as under:-

“ XXXX

(1) If any person having sufficient means neglects or refuses to maintain

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

CRR-776-2007 (O&M)

- 5 -

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate xxx”

13. In view of the said provisions, only a legally wedded wife is entitled for grant of maintenance.

14. In view of the above discussion, the learned Addl. Sessions Judge, Ambala has not committed any illegality or irregularity while passing the impugned order. The present petition has no merits. Consequently, the same stands dismissed.

05.07.2024

Janki

**(HARPREET KAUR JEEWAN)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No