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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-528-2024 (O&M)
Date of decision: 18.04.2024

Gaurab Bains

...Petitioner

Vs.

Dhanvi

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Nitish Sharma, Advocate and
Mr. Chetan Dass Ranga, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition is preferred seeking setting aside of impugned order dated 05.02.2024 passed by learned Family Court, Sri Anandpur Sahib, whereby the respondent was granted Rs.2,000/- per month as interim maintenance under Section 125 Cr.P.C.
2. Briefly, the facts are that the marriage between the petitioner and Reena Rani was solemnised on 29.11.2010 according to Hindu rites and rituals and out of this wedlock, one female child namely Dhanvi (respondent) was born. The respondent is a minor and currently residing with her maternal grandmother at Sri Anandpur Sahib. However, matrimonial dispute ensued and the petitioner and Reena Rani filed a petition for divorce under Section

13-B of the Hindu Marriage Act, 1955, which was granted vide decree dated 08.11.2016 (Annexure P-1). Subsequently, Reena Rani got remarried to another person.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner took a specific stand in his written statement that his mother-in-law has wrongly and illegally taken custody of his daughter and he is willing to maintain her, as he has sufficient source of income. It is further contended that there is a clear-cut recital in the judgment dated 08.11.2016 (Annexure P-1) rendered under Section 13-B of the Hindu Marriage Act, 1955 that the petitioner and his wife will not claim anything from each other in future and nothing is due against each other and it was settled between the parties that minor child would reside in custody of the mother. It is also contended that wife of the petitioner has re-married and the petitioner has already approached the learned Principle Judge, Family Court, Sri Anandpur Sahib seeking custody of his minor daughter from his mother-in-law, being her natural guardian and next friend.

4. Having heard learned counsel for the petitioner and after perusing the record of the case with his able assistance, this Court finds no force in the arguments advanced by learned counsel for the petitioner, for the reason that the petitioner cannot be absolved his liability to maintain his minor daughter.

5. 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.”

6. 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 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 Co-ordinate 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.

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 spouses and

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

7. In view of the discussion above, this Court is of the considered opinion that the petitioner is duty bound to maintain the respondent-his minor daughter. Learned Court below has passed a well reasoned order, which warrants no interference by this Court. Accordingly, present petition is dismissed being bereft of any merit.
8. Pending application(s), if any, shall stand disposed of.

18.04.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

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