

CRR(F)-517-2024

**-1-
2024:PHHC:050407**

109

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

**CRR(F)-517-2024 (O&M)
Date of decision: 15.04.2024**

Naresh Kumar

... Petitioner

Vs.

H minor son of Naresh Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manvinder Singh Dalal, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been preferred against the impugned order dated 02.03.2024 passed by the learned Family Court, Karnal, vide which application filed under Section 125 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was allowed and maintenance of Rs.7,000/- per month was awarded to be paid to the respondent, out of which, Rs.5,000/- per month by the petitioner-father and Rs.2,000/- by mother of the respondent.

2. The marriage between the petitioner and Meenu was solemnized on 03.09.2008 according to Hindu rites and rituals. Out of this wedlock, one male child was born. The respondent is a minor and currently residing with his mother. However, matrimonial dispute ensued between the couple and

the petitioner filed a petition under Section 13 of the Hindu Marriage Act seeking divorce, which was granted vide decree dated 11.09.2023 (Annexure P-1). Thereafter, the respondent/minor son through his mother filed a petition under Section 125 Cr.P.C. seeking maintenance. The petitioner filed a reply and contested the claim made by the respondent. The learned Family Court, vide order dated 02.03.2024, granted maintenance allowance of Rs.7,000/- per month in favour of the respondent, out of which, Rs.5,000/- per month was ordered to be paid by the petitioner-father and Rs.2,000/- by mother of the respondent. Aggrieved by the same, the petitioner has approached this Court by filing the present petition.

3. Learned counsel for the petitioner, *inter alia*, contends that in fact, it is a love marriage and the petitioner is not working as Medical Representative and only working as Carpenter, whereas wife of the petitioner is working as Staff Nurse in Kalpna Chawla Govt. Medical College, Karnal and she admitted that she is earning Rs.60,000/- per month.

4. Having heard learned counsel for the petitioner and after perusing the record with his able assistance, the matter is taken up for final disposal.

5. The object and purpose behind granting maintenance is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of failure of marriage. At the same time, a just and careful balance must be struck to ensure that this provision does not degenerate into a weapon to punish the other spouse. The Courts are required to conduct the maintenance proceedings, while being alive to the legislative intent behind

the provision under Section 125 Cr.P.C in its true spirit, which is to provide speedy assistance and social justice to women, children and infirm parents. The provisions of Section 125 Cr.P.C. were enacted as a measure to further social justice and protect dependent women, children and parents, which also fall within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India.

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. From perusal of the record, it transpires that son of the petitioner is residing with his mother and in his cross-examination, the petitioner has clearly deposed that he has not filed any petition seeking custody of the minor son and he never borne the expenses of studies of his son, therefore, learned Court below has rightly assessed the liability of the petitioner in view of his admission in cross-examination. This Court is of the considered opinion that the petitioner is duty bound to maintain his minor

son/respondent. Learned counsel for the petitioner has not been able to indicate any perversity in the impugned order, which warrants interference by this Court. Accordingly, the present petition is dismissed being bereft of any merit.

15.04.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

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