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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-600-2024 (O&M)
Date of decision: 29.04.2024

Devender Sharma

...Petitioner

Vs.

Yash

...Respondent

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ivneet Singh Pabla, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been preferred against the impugned order dated 04.03.2024 passed by learned Principal Judge, Family Court, Kurukshetra, whereby, while allowing the petition under Section 125 of the Code of Criminal Procedure, 1973 (for short ‘Cr.P.C.’), maintenance of Rs.3,500/- per month has been awarded to be paid to the respondent.
2. Briefly, the facts are that the marriage between the petitioner and Kiran Bala was solemnised on 22.05.2011 and one male child namely Yash-respondent, was born out of this wedlock on 14.03.2012. The respondent is a minor and currently residing with his mother-Kiran Bala. However,

matrimonial dispute ensued and the petitioner and Kiran Bala filed a petition for divorce by way of mutual consent under Section 13-B of the Hindu Marriage Act, 1955, which was allowed vide decree dated 16.04.2018 (Annexure P-7).

3. Learned counsel for the petitioner, *inter alia*, contends that during the divorce proceedings, the petitioner and his wife-Kiran Bala had conceded that the respondent would remain in custody of his mother and she would be responsible for his upbringing and education and no litigation would be pursued in this regard. The petitioner has already paid an amount of Rs.9.50 lacs towards permanent alimony and is not liable to further maintain the respondent. The learned Court below fell into grave error by not considering the lump sum amount already paid, while passing the impugned order dated 04.03.2024.

4. Having heard learned counsel for the petitioner and after perusing the record of the case with his able assistance, the following question arises for the consideration of this Court:

‘Can a minor child claim maintenance when the separated parents have arrived at a settlement with regard to permanent alimony and custody?’

5. A perusal of the compromise deed dated 13.10.2017 (Annexure P-3) entered into by the petitioner-father and mother-Kiran Bala reflects that the settlement exists only qua custody of the minor son and not the liability to

maintain him. The relevant part of the compromise deed is reproduced as under:

“(v) That it is settled that the second party will pay an amount of Rs.9,50,000/- to the first party in the divorce petition under Section 13-B of Hindu Marriage Act i.e. Rs.5 lakh at the time of recording of the first motion and Rs.4,50,000/- at the time of recording of section motion, in the case under Section 13-B of Hindu Marriage Act.

(vi) That it is also agreed between the parties that the minor son Yash shall live under the care and custody of the first party and the 2nd party shall not claim the custody of his son Yash in future also.

(vii) That it is also agreed between the parties that after the date of decree of divorce between the parties, 1st party shall not claim any right in the property of the second party and also the 1st party shall not be entitled for permanent alimony for present, past or future.

(viii) That it is also agreed that the parties shall not file any civil and criminal proceedings against any of the party in future also.

(ix) That it has been mutually agreed between the parties that a petition for quashing the FIR No.211 dated 28.09.2012 under Sections 406/498-A/323 IPC was registered at Police Station Ladwa, District Kurukshetra shall be filed by the second party before the Hon'ble High Court on the basis of compromise. The first party undertakes that she shall have no objection for the quashing of the above said FIR on the basis of compromise....”

6. Furthermore, the joint statement dated 13.10.2017 (Annexure P-5) tendered by the petitioner and Kiran Bala in pursuance of petition under Section 13-B of the Hindu Marriage Act, 1955 mentions that custody of the respondent-son shall remain with his mother. The agreement was limited to Kiran Bala not claiming any further maintenance and no reference in this regard was made qua the respondent-son. The relevant extract is reproduced as under:

“Stated that the petitioner No.1 and petitioner No.2 have got married with each other on 22.05.2011 at Hotel Saffron, Kurukshetra as per Hindu rites and ceremonies. After the marriage, we resided together as wife and husband at Yamuna Nagar and cohabited with each other and one child namely Yash was born out of the said wedlock on 14.03.2012. After the marriage differences developed between us and we could not live together. We have withdrawn ourselves from the society of each other due to temperamental and other differences. We are living separately since June 2012. In spite of efforts made by the families of both the petitioners, it could not be sorted out due to complete incompatibility with each other. We have also settled all our disputes regarding maintenance, Istridhan/permanent alimony, dowry articles etc. It is settled that the petitioner No.2 will pay Rs.9,50,000/- to the petitioner No.1 and out of the above said amount, Rs.5,00,000/- has been received by the petitioner No.1 from the petitioner No.2 vide cheque No.5763803 dated 12.10.2017 and remaining amount of Rs.4,50,000/- will be paid to the petitioner No.1 at the time of second motion. Thereafter, the petitioner No.1 shall not claim any maintenance allowance or

anything from petitioner No.2 in future under any law. The minor child namely Yash is abnormal and suffering from Symptomatic West Syndrome and will remain under the case and custody of the petitioner No.1 and the petitioner No.2 shall have no right to claim the custody of child in the future. If the child wants to go abroad, till he is minor, the petitioner No.2 shall have no objection if he accompanies his mother petitioner No.1 Kiran Bala. The petitioner No.1 can also file any application on behalf of the minor child to any authority or department for the benefit of the child without the permission or consent of petitioner No.2. We will withdraw the cases filed by us against each other. We are making our statement without any fear, coercion or any pressure. We shall not file any litigation against each other in the future. We have decided to dissolve our marriage. Our marriage may kindly be dissolved by a decree of divorce with mutual consent.”

7. 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.”

8. A Co-ordinate Bench of this Court in ***Khursheed Ahmad Vs. Smt. Zakira, 2007(3) R.C.R.(Criminal) 252*** 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(1) R.C.R.(Criminal) 970*** 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.”

9. Evidently, the petitioner and Kiran Bala, mother of the respondent have been granted divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955 and the mother-Kiran Bala has received Rs.9,50,000/- as permanent alimony. Admittedly, the couple had agreed that the custody of the minor son-respondent shall remain with his mother, however, in the compromise deed dated 13.10.2017 (Annexure P-3), no mention was made with regard to liability to maintain the respondent. This Court is of the considered opinion that the mere fact of the mother accepting any alimony or permanent settlement and retaining custody of the child, does not free the

father from his duty to maintain him. Any permanent alimony being granted to the mother would not preclude the child from claiming maintenance under Section 125 Cr.P.C. As such, this Court finds the present petition to be completely misconceived, as it seeks to suffocate the rights of the respondent-minor son.

10. Therefore, in view of settled law, learned Family Court has rightly granted Rs.3,500/- as maintenance to the respondent, vide impugned order dated 04.03.2024. Accordingly, present revision petition is dismissed being bereft of any merit.

11. Pending application(s), if any, shall stand disposed of.

29.04.2024
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[HARPREET SINGH BRAR]
JUDGE

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