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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-529-2024 (O&M)
Date of decision: 25.04.2024

Rudra

...Petitioner

Vs.

Rahul Narwat

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Abhijeet Sharma, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

CRM-16216-2024

1. Present application has been filed under Section 5 of the Limitation Act, 1963 read with Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), seeking condonation of delay of 55 days in filing the present revision.
2. In view of the averments made in the application, same is allowed and delay of 55 days in filing the revision petition is condoned.

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3. The present revision petition has been preferred against the order

dated 17.11.2023 passed by learned Additional Principal Judge, Family Court, Faridabad, praying for enhancement of the maintenance amount Rs.10,000/- per month awarded to be paid to the petitioner, while allowing an application under Section 125(B) Cr.P.C.

4. Briefly, the facts are that the respondent was having extramarital relationship with mother of the petitioner and the petitioner was born on 15.06.2017. When the respondent refused to accept the petitioner and maintain him, DNA was conducted, in which it is proved that the respondent is biological father of the petitioner. Since mother of the petitioner was not having any source of income, she repeatedly requested the respondent to provide the maintenance for the petitioner and he denied to do so. Thereafter, when no other option was left, the petitioner through his mother filed a petition under Section 125 (B) Cr.P.C. seeking maintenance and learned Family Court, vide impugned order dated 17.11.2023, granted maintenance of Rs.10,000/- per month in favour of the petitioner. The petitioner has approached this Court for enhancement of the maintenance amount, by filing the present petition.

5. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has duly proved on record the actual income of the respondent, however, learned Court below fell into grave error by awarding a meagre amount of Rs.10,000/- per month as maintenance to the petitioner and the respondent being father of the petitioner cannot wriggle out his responsibility to maintain him. It is further contended that details of the bank accounts were

duly proved before learned Court below and as such, taking into consideration actual income of the respondent-father, maintenance amount of Rs.10,000/- is required to be enhanced.

6. Having heard learned counsel for the petitioner and after perusing the record of the case with his able assistance, the matter is taken up for final disposal today itself.

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) 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 Coordinate 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.”

9. A perusal of the record indicates that learned Court below relied upon details of the payments credited in the account of the petitioner in Punjab National Bank and came to the conclusion that he must be earning approximately Rs.80,000/- to Rs.1.00 lac per month. Learned Family Court has also considered the fact that the respondent is also shouldering the responsibility of maintaining his wife and two other minor children.
10. In view of the discussion above, this Court finds no illegality or perversity in the impugned order passed by learned Family Court. Therefore, present petition is dismissed being bereft of any merit.
11. Pending application(s), if any, shall stand disposed of.

25.04.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

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