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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-611-2024 (O&M)
Date of decision: 30.04.2024

Sushil Kumar

... Petitioner

Vs.

Madhulica and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rajesh Kumar Bhagal, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been preferred against the impugned order dated 28.03.2024 passed by learned Principal Judge, Family Court, Ambala, whereby the respondents were granted Rs.30,000/- PM (i.e. Rs.10,000/- per month each), as interim maintenance under Section 125 Cr.P.C.

2. Briefly, the facts are that the marriage between the petitioner and Neelam Rani was solemnised on 16.11.2005 according to Nirankari rites and rituals and out of this wedlock, three children i.e. the respondents were born. The respondents are minor and currently residing with their mother- Neelam Rani. However, matrimonial dispute ensued and wife of the petitioner Neelam Rani, without justifiable cause, left his company on 15.01.2021 without his consent and since then, she is residing with her

parents.

3. Learned counsel for the petitioner, *inter alia*, contends that while assessing the interim maintenance, learned Family Court awarded exorbitant amount of Rs.30,000/- per month in favour of the respondents, which is not in consonance with salary of the petitioner. He has to shoulder the responsibility of his old parents and also to pay installments of loan taken from State Bank of India. The wife of the petitioner-Neelam Rani is working as Lecturer in Education Department, Haryana and is earning handsomely and is fully capable to maintain the respondents.

4. 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.

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. A perusal of the record indicates that at this stage, only interim maintenance is granted by learned Family Court in favour of the respondents-minor children of the petitioner and the parties are yet to prove their respective cases by leading the evidence.

8. In view of the discussion above, this Court is of the considered opinion that the petitioner is duty bound to maintain the respondents-his minor children. Therefore, present petition is dismissed being bereft of any merit.

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

[HARPREET SINGH BRAR]
JUDGE

30.04.2024
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No