

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR-F-520-2019 (O&M)

Date of order: 11.03.2024

Smt. Anita

.....Petitioner(s)

Vs.

Surender

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Mohit Rathee, Advocate
for the petitioner.

Nidhi Gupta, J.

CRM-12802-2022

This is an application under Section 482 Cr.P.C. to amend
the petition bearing No.CRR-F-520-2019.

After going through the contents of the application,
which is supported by affidavit of the applicant/petitioner, the same is
allowed subject to all just exceptions and amended Grounds of Revision is
taken on record.

MAIN CASE

Challenge in the present petition is to order dated
29.03.2019 passed by learned Additional Principal Judge, Family Court,
Rohtak whereby the petition filed by the petitioner/wife under Section 125
Cr.P.C. for grant of maintenance, has been dismissed.

2. Learned counsel for the petitioner inter alia submits that
the petitioner was married to the respondent on 18.04.1996. One son was

born out of this wedlock on 29.09.2001. Thereafter, the parties developed differences and accordingly, started living separately. As such, the petitioner filed the present petition under Section 125 Cr.P.C. on 12.10.2015 for grant of maintenance allowance.

3. Learned counsel submits that the learned Family Court is in patent error in dismissing the petitioner's petition as it has failed to appreciate that the respondent is serving as Head Constable with Delhi Police and is drawing a salary of Rs.46,000/- per month along with other benefits. Besides that he is also having moveable and immovable properties including a plot No.2 measuring 150 Sq. yards situated near Ram Gopal colony, Sonapat road, Rohtak and plot no. 53 measuring 150 Sq. yard carved out in killa no. 38/7, Ekta Colony, Rohtak and a house constructed on 300 Sq. yards situated at Ram Gopal Colony, Rohtak and a plot measuring 300 Sq. yards at Ram Gopal Colony, Rohtak and other plots and agricultural land situated at village Ruraki, Tehsil & District Rohtak and therefore, he is capable and duty bound to maintain the petitioner. Accordingly, the petitioner is entitled to maintenance.

4. It is further submitted that the impugned order has been passed on the ground that the petitioner was living in adultery. Learned counsel contends that the said allegations of adultery pertained to the year 2006, whereafter, the respondent/husband had pardoned the petitioner for the same and they had continued to live as husband and wife till 2013 and therefore, the same could not have constituted a ground for denying maintenance to the petitioner.

5. No other argument is made on behalf of the petitioner.

6. I have heard learned counsel for the petitioner and perused the case file in detail.

7. Perusal of record of the case shows that it has been admitted by the petitioner herself that Sagar, son of the petitioner and respondent, had earlier filed a maintenance petition under Section 125 Cr.P.C. through the petitioner, which was compromised between the petitioner and the respondent on 17.09.2014, as per which the petitioner had given a written agreement/undertaking that she would not demand any maintenance for herself and accordingly, an amount of Rs.5,000/- per month was allowed in favour of Sagar.

8. As regards allegations of adultery against the petitioner, the relevant findings given by learned Family Court are as under:-

“12. The main defence on which the respondent has resisted this maintenance petition is that his wife is leading an adulterous life. A perusal of the cross-examination of petitioner Anita would make it clear that she has admitted that she lived in the house of Sh. Kalup Singh Kadian for about a week alongwith her known person in the same premises which was taken on rent by the said known person. However she later on conceded that the said known person was no one else but the brother-in-law (sister's husband) of the respondent. She has further conceded in her cross-examination conducted on 20.9.2018 that she left her house on 22.6.2006 and returned back after about 5-6 days and went to her parental home and thereafter she left her parental home on 15.12.2006 and returned back after about four days. She has further admitted that during that period she had stayed at her friend's house but she did not disclose the name of the said friend.”

9. Learned counsel for the petitioner is unable to controvert the above said admissions made by the petitioner before the Id. Court below.

10. In such a situation provision of Section 125 (4) Cr.P.C. comes into play, which unequivocally stipulates as follows: –

“(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.”

11. In the present case, it has been admitted by the petitioner herself that she had lived in adultery. As such, as per the above provision, the petitioner is not entitled to maintenance.

12. Reference may also be made to judgment of Allahabad High Court in **“Smt. Babita Gangwar Vs. Ram Pal Gangwar”** Law Finder Doc ID # 352478, wherein it has been held as under:-

“A. Criminal Procedure Code, 1973 Section 125(4) Maintenance - Wife living in adultery with another person is not entitled to maintenance or interim maintenance - Petitioner wife had contracted another marriage during the lifetime of her first husband with whom her marriage had not been legally dissolved - It clearly amounts to adultery - According to the provision of Section 125(4) she would not be entitled to any allowance for maintenance or interim maintenance.”

13. In view of the above noted, factual and legal position, I find no ground is made out to interfere in the impugned order. The present petition is accordingly **dismissed**.

14. Pending application(s) if any also stand(s) disposed of.

11.03.2024

Sunena

(Nidhi Gupta)

Judge

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