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18.07.2006 and respondent No.2 was born on 19.07.2007. The petitioner after her marriage with the father of respondents No.1 & 2 was living in a joint family with her father-in-law, namely, Ishwar Sharma. All the expenses of the house and the property were purchased from the joint income of all the family members. On 20.01.2008, husband of the petitioner died in an accident. Thereafter, the petitioner proposed to her father-in-law that she wanted to have second marriage on which a *panchayat* was held on 05.05.2020 and it was decided the petitioner can solemnize second marriage and after her second marriage, respondents No.1 & 2 will live with their grandfather, namely, Ishwar Sharma. It is further alleged that it was also decided that both the parties will not file case against each other in the Court for maintenance, expenses etc.

3. Learned counsel for the petitioner *inter alia* contends that during the *panchayat*, both parties had conceded that respondents No.1 & 2 would remain in the custody of Ishwar Sharma i.e. father-in-law of the petitioner and he would be responsible for their upbringing and education and no litigation would be pursued in this regard. In fact, a petition under Section 125 Cr.P.C. was filed by the respondents and the learned Court below has fallen into error by not considering the fact that Ishwar Singh i.e. grandfather of the respondents is having sufficient means for taking care of both the children and amount awarded to the respondents is liable to be reduced.

4. Having hear the learned counsel for the petitioner and after perusing the record of the case with his able assistance, it is transpires that the husband of the petitioner died on 20.01.2008 and thereafter, the petitioner got remarried. However, it is her minor sons-respondents No.1 & 2 who have been



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granted Rs.3000/- (Rs.1500/- per month) as maintenance vide the impugned order dated 19.09.2023.

5. A two Judge bench of the Hon'ble Supreme Court in ***Nagendrappa Natikar v. 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 v. 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 v. 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.”

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7. In view of the discussion above, this Court is of the considered opinion that the petitioner is duty bound to maintain respondents No.1 & 2- her minor sons. Therefore, the present petition is dismissed being bereft of any merit.

31.07.2024
Neha

(HARPREET SINGH BRAR)
JUDGE

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