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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-29692-2024 in/and
CRR(F)-958-2024
Date of decision: 31.07.2024

Rajesh

....Petitioner

Versus

Ashok Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vikas Bishnoi, Advocate
for the applicant/petitioner.

HARPREET SINGH BRAR, J. (ORAL)

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This is an application under Section 5 of the Limitation Act read with Section 482 Cr.P.C. seeking condonation of delay of 837 days in filing the present revision petition.

For the reasons mentioned in the application, the same is allowed and the delay of 837 days in filing the present revision petition is hereby condoned.

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1. The present petition has been preferred against the impugned judgment dated 23.01.2020 passed by the learned Family Court, Fatehabad under Section 125 of the Cr.P.C. vide which nothing was awarded to petitioner-wife as maintenance.

2. The marriage between the petitioner and the respondent was solemnized on 04.12.2004 according to Hindu rites and rituals. Out of this wedlock, one female child was born. However, matrimonial dispute ensued



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between the couple and the petitioner filed a petition under Section 125 Cr.P.C. seeking maintenance. The respondent filed a reply and contested the claim made by the petitioner. Learned Family Court, vide order dated 23.01.2020, declined to grant maintain to the petitioner. Aggrieved by the same, the petitioner has approached this Court by filing the present petition.

3. Learned counsel for the petitioner, *inter alia*, contends that learned Family Court fell into grave error by declining any maintenance to the petitioner as the petitioner is not able to fulfill her day to day needs and she is totally dependent upon the mercy of her parents.

4. Having heard learned counsel for the petitioner and after perusing the record with his able assistance, this Court finds no force in the arguments raised by learned counsel for the petitioner.

5. The object and purpose behind granting maintenance is to ensure that the dependent spouse/child is not reduced to destitution or vagrancy on account of failure of marriage. At the same time, a just and careful balance must be struck to ensure that this provision does not degenerate into a weapon to punish the child. The Courts are required to conduct the maintenance proceedings, while being alive to the legislative intent behind the provision under Section 125 Cr.P.C in its true spirit, which is to provide speedy assistance and social justice to women, children and infirm parents. The provisions of Section 125 Cr.P.C. were enacted as a measure to further social justice and protect dependent women, children and parents, which also fall within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India.



6. Further, a two-Judge Bench of the Hon'ble Supreme Court in ***Kirtikant D. Vadodaria Vs. State of Gujarat (1996) 4 SCC 479***, speaking through Justice Faizan Uddin, opined as follows:

“15.... While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation.”

7. Another objective the legislature has sought to achieve by this provision is to provide maintenance *pendente lite* to the applicant spouse/child during proceedings emerging out of matrimonial disputes so that she/he can maintain herself/himself, have sufficient funds to pursue the litigation, and not suffer at the instance of the affluent spouse/parent.

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 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.”



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9. In view of the discussion above and on perusal of the records, it transpires that the learned Family Court has rightly observed that the petitioner is not entitled to any maintenance from the respondent as she has herself refused to live with the respondent/husband without any sufficient reason and also failed to prove the allegation of dowry and cruelty and therefore, it is evident that the Court below has duly considered the material placed before it while deciding the application for maintenance. Learned counsel for the petitioner has not been able to indicate any perversity in the impugned order which warrants interference by this Court. Accordingly, the present petition is dismissed being bereft of any merit.

(HARPREET SINGH BRAR)
JUDGE

31.07.2024

Neha

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