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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CRM-M-37330-2020 (O&M)
Reserved on: 16.05.2024
Pronounced on: 21.05.2024

Poonam Khanna ...Petitioner

Versus

Dr. V. P. Sharma ...Respondent

2. CRM-M-8351-2022 (O&M)

Poonam Khanna ...Petitioner

Versus

Dr. V. P. Sharma ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Petitioner in person.

Respondent in person with
Mr. Ankit Choudhri, Advocate.



HARPREET SINGH BRAR, J.

CRM-M-37330-2020

1. The present petition has been preferred under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') seeking quashing of impugned order dated 27.02.2020 (Annexure P-1) passed by the learned Additional Sessions Judge, Chandigarh whereby the order dated 17.12.2018 (Annexure P-2) passed by the Judicial Magistrate Ist Class, Chandigarh granting maintenance of Rs. 10,000/- per month under Section 125 Cr.P.C. to the petitioner, was set aside.

CRM-M-8351-2022

2. The present petition has been preferred under Section 482 of the Cr.P.C. seeking quashing of impugned order dated 25.11.2021 (Annexure P-1) passed by the learned Judicial Magistrate Ist Class, Chandigarh whereby the execution petition filed by the petitioner seeking arrears of maintenance granted under Section 125 Cr.P.C., for retrospective period of 27.05.2009 to 17.12.2018, has been dismissed being infructuous.

CRM-M-37330-2020 and CRM-M-8351-2022

3. This common order shall dispose of both the above-mentioned petitions as they are interconnected and arise out of identical factual matrix. However, for the sake of brevity, the facts are taken from CRM-M-37330-2020. In view of the directions issued by the Hon'ble Supreme Court on 16.02.2024 passed in **SLP(Criminal) No. 794/2024** titled as



‘Poonam Khanna vs. Dr. V.P. Sharma,’ the case is taken up for final disposal, with the consent of the parties.

FACTUAL BACKGROUND

4. Succinctly, the facts of the case are that the marriage between the petitioner and the respondent was solemnised on 18.01.1979. Out of this wedlock, one male child was born on 26.11.1980. Their son suffers from intellectual disability. The respondent-husband is a senior consultant anaesthetist and has a private practice for the last two decades. He is also attached to several prestigious nursing homes and hospitals in South Delhi. The petitioner-wife is also a doctor by qualification, however, she has not been able to practice as their son, being a person with intellectual disability, requires around the clock care. The respondent-husband deserted the petitioner and their son in the year 1999 and started residing with one lady at Munirka, whom he married in 2004.

5. A divorce petition was filed in the year 2001 which was dismissed in default in January, 2002. On 02.04.2003, the parties entered into an agreement wherein certain conditions were laid down. Based on the said conditional agreement, a divorce was granted on mutual consent vide order dated 03.05.2003. During the divorce proceedings, no decision was made qua maintenance as cash or property. The petitioner served a legal notice dated 29.06.2005, under Section 66 of the Indian Contract Act, stating that she is resiling from the conditional agreement dated 02.04.2003, due to repeated violation of the same by the respondent.



Thereafter, the respondent filed a suit for the custody of their son as well as a suit against the settlement agreement dated 02.04.2003. Additionally, the petitioner had adopted an infant girl child after the divorce.

6. Citing her inability to maintain herself and their son, the petitioner moved an application under Section 125 Cr.P.C. After assessing all the evidence available on record, the learned Judicial Magistrate 1st Class vide order dated 17.12.2018 (Annexure P-2) granted Rs. 10,000/- to her as maintenance. Aggrieved by the same, the respondent preferred a revision petition against the same, which was allowed vide impugned order dated 27.02.2020.

CONTENTIONS

7. The petitioner, appearing in person, *inter alia* submitted that their son-Manu is a person with special needs. Since he needed 24-hour care, the petitioner had dedicated herself to tending to him and gave up pursuing her own career, in spite of being a doctor by qualification. She has also adopted a daughter post-divorce, with a view to have assistance for her son later in life, as the State does not provide for any social support system for persons with intellectual disabilities. Further, the following arguments were raised by the petitioner:

a. She was neither awarded any permanent alimony during the divorce proceedings nor was her *stridhan* returned to her. In fact, the recital in the settlement deed dated 02.04.2003 (Annexure P-7) stating that the petitioner will not claim any maintenance for herself or their son, or claim any jewellery, *stridhan* or moveable property,



goes to show that the respondent never intended to take responsibility for the petitioner or their son. She requires at least Rs. 35,000/- per month to meet the special needs of their son and being a single mother with limited earning capacity, she is unable to tend to their son properly.

b. She further submits that the settlement deed dated 02.04.2003 (Annexure P-7) previously entered between the parties is now defunct and non-enforceable as admittedly, both the parties have failed to adhere to its terms and conditions, rather, the respondent has been continuously violating the same. A perusal of the settlement deed dated 02.04.2003(Annexure P-7) would show that there was a condition precedent imposed upon the respondent-husband that he will never interfere in the peaceful living of the petitioner and her disabled son. It was further agreed that the respondent will never claim the custody or visitation rights of their son-Manu. Despite such, the respondent has sought the custody of their son- Manu and has also filed one criminal complaint against their son, for which the respondent-husband was reprimanded by the Hon'ble Supreme Court. Further, the respondent-husband has also filed a civil suit claiming the possession of the properties which were given to the petitioner under the settlement deed dated 02.04.2003(Annexure P-7). The relevant part of the settlement deed dated 02.04.2003(Annexure P-7) reads as follows:

“... a settlement is arrived at between the parties on the single condition that the first party will never interfere in the peaceful living of the second party with her handicap son and will never claim the custody and meeting rights of the child Manu in future. The first party will never say that the second party has called the first party to meet the child Manu...”

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xxx

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4. *That it has been agreed and mutually decide by and between the parties that after doing the exercise as spelt out in para-2 as stated herein above the parties shall withdraw their respective cases as filled in various courts.*

5. *That Dr. Poonam will look after the son Manu for whole of the life, she shall never claim any maintenance either for herself or for the son Manu.*

6. *That the second party will never claim any jewellery or any other moveable property, Istridhan in future.*

The statement regarding the custody of child and voluntary surrender of meeting rights will be given by the first party in the Guardianship Court of Ms. Neena Bansal Kishna, in the Court of Ms. Pinky, Patiala House and in the Court of ADJ...”

Once the respondent has violated the settlement deed dated 02.04.2003, the petitioner does not remain bound by it. In this regard, the attention of the Court was drawn to the order dated 15.03.2017(Annexure P-11) passed by a Division Bench of the Delhi High Court in which it has been specifically observed that the terms and conditions of the settlement deed dated 02.04.2003(Annexure P-7) on the basis of which divorce has been granted merely affects matrimonial ties of the parties. As such, the petitioner cannot be held to be disentitled from claiming maintenance under Section 125 Cr.P.C. in view of the settlement deed.

c. The petitioner further emphasised that her claim to maintenance from her husband stems from her statutory right which cannot be bartered or navigated by the respondent-husband by setting up an agreement to the contrary. Such an agreement would not only be against public policy but also against the clear intendment of the statutory provision. She relied upon the following judgments to argue that the wife is entitled to claim maintenance



under Section 125 of the Cr.P.C., even if she has voluntarily surrendered her right to maintenance during divorce proceedings:

Judgment	Court
State of Punjab(now Haryana) and others vs. Amar Singh and another 1974 AIR SC 994	The Hon’ble Supreme Court
Bai Tahira vs. Ali Hussain Fissalli Chothia and another AIR 1976 SC 362	The Hon’ble Supreme Court
Ranjit Kaur vs. Pavittar Singh 1991(3) R.C.R.(Criminal) 212	Punjab and Haryana High Court
Rajesh Kochar vs. Reeta Kumari 2002(4) R.C.R.(Criminal) 395	Patna High Court
Sadasivan Pillai vs. Vijaylakshmi 1987(2) DMC 203	Kerala High Court
Narendra Mohapatra vs. Manorama Mohapatra 2004(3) R.C.R.(Criminal) 162	Orissa High Court

d. The petitioner further referred to the cross-examination of the respondent, available at Page 117 of the paperbook, wherein he had admitted that the petitioner is entitled to maintenance despite the private settlement deed dated 02.04.2003(Annexure P-7) and the divorce decree dated 03.05.2003 (Annexure P-10). The respondent had also admitted that he had not filed any suit for specific performance of the settlement deed dated 02.04.2003(Annexure P-7).

8. Learned counsel for the respondent wishes to withdraw his power of attorney. Allowed, as prayed for.

9. *Per contra* the respondent, also appearing in person, made the following arguments:



a. There is a specific recital in the settlement deed dated 02.04.2003(Annexure P-7), in view of which divorce was granted under Section 13-B of the Hindu Marriage Act, 1955, that the petitioner shall not claim any maintenance. As such, the present petition is not maintainable, since the consent decree acts as an estoppel. Reliance in this regard can be placed upon ***Pushpa Devi Bhagat (D) th. L.R. Smt. Sadhna Rai vs. Rajinder Singh and others (2006) 5 SCC 566.***

b. For claiming maintenance, the petitioner has to first satisfy this Court that she is unable to maintain herself. The petitioner has not placed her salary certificate on record. In fact, she had merely admitted that she is working at Air Force Hospital, Chandigarh on an honorarium of Rs. 10,500/- per month. She is also receiving Rs.2800/- per month as pension from Life Insurance Corporation.

It is further contended that the petitioner is a senior gynaecologist and lives in a 10 marla house in Sector 7, Panchkula while the respondent lives in a small 2-BHK flat in New Delhi. Moreover, the petitioner has recently sold a house in order to purchase two flats in MDC Complex, Sector 4, Panchkula- one for residence and the other for clinic. The settlement deed dated 02.04.2003(Annexure P-7) provided that upon the sale of the house in C-18, Shivalik, Malviya Nagar, New Delhi, 55% of the sale proceeds would go to the petitioner. The current market value of the said property property is about Rs. 8 to 9 crores. The property also has the potential to earn rental income of Rs. 80,000/- per month. However, the petitioner, for reasons best known to her, is adamant in not complying with the terms of the settlement deed. As a matter of fact, the petitioner has also paid Rs. 17,00,000/- as fees for the



admission of her adopted daughter in a private medical college. All these facts buttress the claim of the respondent that the petitioner has sufficient means to maintain herself.

c. Furthermore, the petitioner is trying to take benefit of her own wrong i.e. non-compliance of the terms of the settlement deed dated 02.04.2003(Annexure P-7) on her part. Even after categorically undertaking to withdraw the criminal cases filed by her against the respondent, at the time of obtaining the divorce, the petitioner has failed to do so. The respondent waited for 4 years and continuously requested her to withdraw the criminal cases in compliance of the terms of the settlement deed dated 02.04.2003(Annexure P-7). It was only on her refusal to do the same, that the respondent was compelled to file a petition seeking custody of their son. The petitioner took the shield of the same settlement deed dated 02.04.2003(Annexure P-7) to contest the respondent's claim for custody. This fact is established from the judgment rendered by the Delhi High Court in '**Dr. Poonam Khanna vs. Dr. V.P. Sharma**' CMM-526/2008, available at Page 876-878 of the Lower Court Record. As such, the petitioner cannot be allowed to probate and reprobate about the settlement deed.

d. The petitioner had filed a complaint under the Protection of Women from Domestic Violence Act, 2005 (hereinafter 'DV Act') which was held to be not maintainable in view of the settlement deed dated 02.04.2003(Annexure P-7), which contained a specific recital that no party shall file further cases against each other. The exact argument raised by the petitioner herein that since the respondent has not complied with the terms of the settlement deed dated 02.04.2003(Annexure P-7), she herself is not bound by the same, was rejected by the Delhi High Court and the order of the trial Court declaring the complaint under DV Act to be not maintainable,



was upheld in view of the settlement deed dated 02.04.2003(Annexure P-7).

e. It is further contended that at the time of the divorce, three properties were owned by the parties that are listed below:

- i. Shop in Malviya Nagar, New Delhi.
- ii. Flat no. 1, DDA Flats, Khirki Village, Malviya Nagar, New Delhi.
- iii. House in C-18, Shivalik, Malviya Nagar, New Delhi

Since the petitioner insisted on having their son's custody, the respondent gave up his lien on the shop in Malviya Nagar, New Delhi as well as Flat no. 1, DDA Flats, Khirki Village, Malviya Nagar, New Delhi. Additionally, the respondent is regularly paying Rs. 15,000/- per month towards maintenance of their son. Interestingly, the petitioner is contesting for maintenance of Rs. 10,000/- per month but she is not willing to sell the house (C-18, Shivalik) and take her share of 55% of the sale proceeds.

f. Moreover, this Court, the Delhi High Court as well as the Hon'ble Supreme Court has examined the settlement deed dated 02.04.2003(Annexure P-7) and found the same to be valid. The respondent submitted that he has consistently declared before the Courts that he is willing and ready to comply with the settlement deed dated 02.04.2003(Annexure P-7). However, it is the petitioner who refuses to comply with the same and is only interested in harassing the respondent by engaging him in multiple litigation, just to wreak vengeance on him out of private spite and personal vendetta. In the year 2011 as well, the petitioner refused to follow the settlement deed before the Hon'ble Supreme Court, which had



also tried for mediation. The respondent further brought the attention of this Court to the observations made by the High Courts and the Hon'ble Supreme Court with regard to the conduct of the petitioner.

- A two Judge bench of the Hon'ble Supreme Court in ***'Poonam Khanna vs. V. P. Sharma and another'*** Crl. Appeal **1625 of 2009** made the following observations vide order dated 17.03.2011:

"2...We put it to the respondent as to whether he would be willing to withdraw all the cases which had been initiated by him. He categorically stated that he would do so but when a similar query was put to the appellant she, at the Crl.A. No. 1625 of 2009 2 initial stage, said that she would not withdraw them but when told that we were inclined to dismiss the appeal, she said that she would withdraw the cases that she had filed but would continue to pursue some of the applications that had been filed on behalf of the child and would continue to seek additional maintenance."

- A Co-ordinate Bench of the Delhi High Court in ***'Dr. V.P. Sharma vs. State and another'*** in Crl.M.C. **3337/2007** decided on 23.01.2009, speaking through Justice Aruna Suresh made the following observations:

"18...Respondent No. 2 has already obtained an injunction order against the petitioner, thereby restraining him not to visit within the radius of 100 meters of the property. With an end to all the litigations inter se the parties a congenial platform would be built for the parties to initiate efforts for sale of the house,



sale proceeds of which are to be divided in the ratio of 45:55 between the petitioner and respondent No. 2. In the backdrop of checkered history of litigation respondent No. 2 cannot be allowed to continue with the cases with a hostile attitude; might be with a view to grab whole of the property.

19. It is the petitioner who has been rendered homeless in this entire litigation even when he has shown his bona fides in executing his part of the compromise. Hence, under the circumstances of this case, where parties have been litigating with each other over a long period to the detriment of the interest of a mentally retarded child and dispute now seems to be more of property dispute, it is in the interest of justice to bring this entire litigation to an end and to ensure that the relevant clause of the agreement which has become bone of contention; property is sold and sale proceeds are distributed as per respective shares agreed between the parties; that is computed with, this petition is accordingly allowed.”

- Further, a Co-ordinate Bench this Court in **‘Dr. V. P. Sharma vs. Manu Khanna’ CRR(F)-69-2015** decided on 24.05.2018, speaking through Justice Anita Choudhary opined as follows:

“In the case decided by the Delhi High Court on 22.11.2013 the Delhi High Court did not permit Poonam Khanna to set up a new case contrary to the agreement and assert different rights in respect to the property bearing C-18, Shivalik, New Delhi.

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The property admittedly even till now has not been sold. The father claims that Poonam was



not allowing the property to be given on rent or sold, purposely and she was creating hindrances. Even despite the divorce and the settlement, there is a visible acrimony between the parents.”

OBSERVATIONS AND ANALYSIS

10. Having heard the parties and after perusing the record with their able assistance, the following questions are framed for proper adjudication of the present case:

(i) Whether the petitioner is entitled to claim maintenance in spite of having surrendered her right to the same at the time of the divorce?

(ii) Whether the petitioner is entitled to maintenance as she is unable to maintain herself?

11. A Co-ordinate Bench of this Court in ***Ranjeet Kaur vs. Pavittar Singh 1992(2) R.C.R.(Criminal) 575*** referred the following question to a Division Bench:

“Whether a wife who has voluntarily surrendered her right to maintenance in divorce, would not be entitled to claim subsequently maintenance allowance under Section 125 Cr.P.C.?”

12. The Division Bench of this Court in ***Ranjit Kaur(supra)*** has answered the reference in the affirmative, holding that that jurisdiction of the Magistrate is not ousted by any agreement between the parties, if the facts and circumstances of the case otherwise justify the grant of



maintenance under Section 125 Cr.P.C. Speaking through Justice I.S.

Tiwana, the following observations were made:

“4....As has been pointed out earlier, the jurisdiction of the Magistrate under this Section is not ousted by any agreement between the parties if the facts and circumstances of the case otherwise justify the grant of maintenance. In other words, in every such case the Magistrate is bound to examine whether there has been neglect or refusal on the part of the husband to maintain the wife. If the Magistrate finds that the wife is being so neglected or so refused to be maintained despite the agreement for grant of maintenance at a particular rate or denying the same he is duty bound to award appropriate maintenance under this Section. The agreement pleaded being opposed to public policy and against the clear intendment of this Section cannot be enforced or be a shield in a Court of law.”

13. Moreover, two Judge bench of the Hon’ble Supreme Court in ***Gurmit Kaur vs. Surjit Singh 1996 Cr.L.R.SC 60*** has held that shelter of Section 125(4) Cr.P.C. cannot be taken to avoid paying maintenance when the couple has divorced.

“6. The concept of living separately by mutual consent arises so long as the marriage subsists and the parties agree to live separately by consent. In other words, during the subsistence of the marriage, no party is entitled to lay any claim for maintenance from the other party.”

7. In view of the divorce agreement referred to hereinabove, the marital relations have come to a terminus. By virtue thereof, the respondent had already contracted the second marriage. In other words, the first marriage has been put to an end. The appellant thereby became entitled to claim maintenance and will continue to do so, so long as she remains unmarried and she is unable to maintain herself.”



14. Further, the scope and legislative intent of Section 125 Cr.P.C. requires examination for proper adjudication of the controversy, more particularly, sub-section 1 of the said provision, which primarily deals with the instant case. Section 125(1) Cr.P.C. reads as follows:

Section 125- Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct”

15. Section 125 Cr.P.C. has not been put in place to punish one for past neglect but is focused on preventing vagrancy by compelling the spouse who can support themselves to assist the other party, which would have a moral claim to such support. Tersely put, the object of the said provision is to prevent starvation and vagrancy on account of failure of marriage. However, a just and careful balance must be struck to ensure



that this provision does not degenerate into a weapon to punish the other spouse. The Courts are required to conduct maintenance proceedings while being alive to the legislative intent behind the provision under Section 125 Cr.P.C and 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 falls within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India.

16. A perusal of the aforementioned provision clearly indicates that while dealing with a matter pertaining to grant of maintenance, the Magistrate is bound to examine whether:

- a. the husband has sufficient means and there has been neglect or refusal on his part to maintain his wife; and
- b. the wife is unable to maintain herself.

17. A perusal of the affidavit of assets and liabilities of the petitioner indicates that it has not been filed in the prescribed format, in terms of the judgment rendered by the Hon'ble Supreme Court in ***Rajneesh vs. Neha 2021(2) SCC 324***. Further, the petitioner has declared her qualification as M.B.B.S., M.D., Diploma in Gynecology and Obstetrics (DGO) and that she is residing in a self-owned flat at Rail Vihar, MDC-4, Panchkula. The petitioner also owns a property i.e. basement, a roof and above rights in C-18, Shivalik, Malviya Nagar, New



Delhi and claims to have earned an honorarium of Rs. 10,500/- per month from 27.09.2017 to 23.03.2020.

18. The material available on record does not reflect vagrancy on part of the petitioner or that she is unable to maintain herself. Rather, she seems to possess adequate resources to maintain herself and her children. Moreover, the respondent is also paying Rs. 15,000/- per month towards maintenance of their disabled son and, obviously, is not liable for the well being of the petitioner's adopted daughter. As such, since the petitioner has not been able to prove her inability to maintain herself, coupled with the fact that she is a highly qualified professional, this Court finds no reason to fasten the liability of maintaining her onto the respondent-husband.

19. As far as CRM-M-8351-2022 is concerned, the petitioner's claim for arrears of maintenance from 27.05.2009 to 17.12.2018 stems from order dated 17.12.2018 passed by learned Judicial Magistrate Ist Class, Chandigarh whereby her application under Section 125 Cr.P.C. was allowed and Rs. 10,000/- per month was granted to her as maintenance. Aggrieved by the same, the respondent preferred a revision petition before the learned lower Appellate Court, which was allowed vide order dated 27.02.2020 and order dated 17.12.2018 passed by the learned trial Court was set aside. In view of the discussion above, this Court is of the considered opinion that order dated 27.02.2020 passed by the learned Additional Sessions Judge, Chandigarh, was based on correct appreciation



of material available on record. The petitioner has not been able to indicate any perversity in the impugned order in CRM-M-8351-2022 i.e. order dated 25.11.2021 passed by the learned trial Court, that warrants interference by this Court, as such the question of execution does not arise.

CONCLUSION

20. In view of the discussion above, the questions framed are answered in the following terms:-

(i) As long as the wife remains unmarried and is unable to maintain herself, she is entitled to maintenance under Section 125 Cr.P.C., even if she has surrendered her right qua the same during divorce proceedings.

(ii) The petitioner does not appear to be in any financial hardship. Not only is she well qualified but is also in possession of sufficient resources to maintain herself in consonance with the standard of living she was accustomed to pre-divorce. As such, this Court does not find her entitled to maintenance under Section 125 Cr.P.C.

21. Accordingly, both the above-mentioned petitions are dismissed, being bereft of any merit. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

21.05.2024
Neha

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