

**IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH****117****CRM-M-35149-2024(O&M)****Date of order: 29.11.2024****Mohd. Nadeem****.....Petitioner(s)****Vs.****State of Punjab & Another****.....Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Abdul Aziz, Advocate  
for the petitioner.

Mr. Kunwarbir Singh, AAG Punjab.

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**Nidhi Gupta, J.****CRM-45652-2024**

This is an application under Section 482 Cr.P.C. for placing on record affidavit dated 21.09.2024.

After going through the contents of the application, the same is allowed subject to all just exceptions and affidavit dated 21.09.2024 is taken on record.

**MAIN CASE**

Challenge in the present petition is to the order dated 07.05.2024 (Annexure P7) passed by the learned Principal Judge, Family Court, Sangrur, Camp at Malerkotla, whereby the application of the petitioner for staying 'recovery of maintenance proceedings till disposal of application for setting aside the ex parte proceedings dated 15.12.2017', has been dismissed.

2. Perusal of record of the case shows that the petitioner was married to the respondent No.2 on 08.04.2011. One daughter was born out of their wedlock on 17.02.2012 who is in the care and custody of respondent No.2. Admittedly, the petitioner resides and works in Saudi Arabia, whereas the Respondent No.2 and the minor child live in India. As the petitioner was not providing for the respondent wife and minor child, they had filed a petition under Section 125 Cr.P.C. dated 13.07.2017 (Annexure P3) seeking grant of maintenance inter alia on the ground that the petitioner is earning more than ₹70,000/- per month from his work in Saudi Arabia whereas the respondent/wife and the minor child had no source of income. It was further pleaded in the said petition, that in the end of July 2015, the petitioner and his family had demanded ₹1,00,000/- from the respondent no.2. As she was unable to pay, she was turned out of the matrimonial home along with the minor child. It was further pleaded/alleged that the petitioner and his family had obtained the signatures of the respondent-wife on some blank papers of mutual divorce, however, neither were the dowry articles returned to her, nor was she paid even a penny of the settlement amount. It was further alleged that the petitioner had filed some civil suit on behalf of respondent No.2 which, in actual fact, was never filed by her. As such, she had made a statement upon which the said suit was withdrawn. Upon notice, the petitioner had initially put in appearance before the Id. Family Court, however, had subsequently failed to appear. As such, he was proceeded against ex parte vide order dated 15.12.2017.

3. The above said petition of the respondent No.2 and the minor child for grant of maintenance was allowed by the learned Sub-Divisional Judicial Magistrate, Malerkotla vide ex parte order dated 01.06.2018 (Annexure P4) granting final maintenance of Rs.3,000/- each per month to respondent No.2 and the minor child. In passing the said direction, the learned Magistrate took into consideration the fact that the respondent No.2 had produced and proved the original school fee receipts of the minor child from February, 2017 to March 2018/Exhibit A1 to Exhibit A8; respondent No.2 had also examined her brother AW2 in support of her contentions; and had also tendered into evidence certified copy of order dated 18.03.2016 and certified copy of statement dated 18.03.2016 (Ex.A9 to Ex.A10 respectively) from which it was proved on record that the respondent No.2 and the minor child had no source of income and they are residing at the mercy of mother and brother of respondent No.2 nor is she owner of movable or immovable property.

4. It has been contended by the petitioner before this Court, that in terms of the mutual divorce/settlement dated 15.3.2016 (Annexure P-2), between the parties, the petitioner had paid the total settlement amount of ₹12,50,000/- to the respondent no.2. First and foremost, the veracity and authenticity of the above said alleged settlement has not been proven before any Court, in accordance with law. As such, any alleged terms and conditions thereof relied upon by the petitioner, cannot come to his assistance.

5. In any event, this Court had afforded opportunity to the petitioner to substantiate his above-said claim and Bona Fide. Accordingly, on 25.07.2024, following order was passed by this Court: -

*“Learned counsel for the petitioner seeks time to place on record some additional documents in support of his contention that at the time of settlement dated 15.03.2016 (Annexure P-2) entered into between the petitioner and respondent No. 2, the petitioner had deposited an amount of Rs.12,50,000/- in the account of respondent No. 2.*

*Adjourned to 26.09.2024.”*

6. On 26.09.2024, learned counsel for the petitioner had sought some more time to comply with the above said order dated 25.07.2024 by submitting that the delay had occurred on account of the fact that the petitioner resides in Saudi Arabia. Today again a request for adjournment has been made. However, this Court is not inclined to grant the said request of the petitioner on account of the above noted, undisputed facts. Moreover, a perusal of the alleged settlement between the petitioner and respondent no.2 shows that it has inter-alia, been stated therein that: *“The responsibility of care, upbringing, education, benefit and harm of child Hadia and the responsibility Marriage of Hadia will be in the hands of party no.2. From today, party no.1 has no liability towards party no.2 and Hadia. ....”* Party no.1 being the petitioner, and party no.2 being the respondent no.2 herein. The legal position in this regard is very clear and unambiguous. The issue, that it is not open to the mother/guardian to forego or waive or forfeit the rights of the minor children by way of any settlement arrived at between the warring parties, is no longer res integra. It is long settled that the mother cannot give up rights which vest in

the minor children. The Hon'ble Supreme Court in "**Ganesh v. Sudhirkumar Shrivastava (SC): Law Finder Doc Id # 1447501**" in similar circumstances has categorically held that *"It was certainly open to the wife to give up any claim so far as maintenance or permanent alimony or stridhan but she could not have given up the rights which vest in the daughter insofar as maintenance and other issues are concerned."* The above view has been followed by the Delhi High Court in cases of '**Vivek Kumar and others versus State and another**' (Delhi): Law Finder Doc Id # 2282913; and in '**Murari Lal and others versus State and another**' Law Finder Doc Id #2448355.

7. However, despite the above facts, the petitioner had failed to pay the maintenance to the respondent-wife and minor child and / or comply with the order dated 01.06.2018 (Annexure P4). As such, the respondent No.2 had filed an application dated 01.06.2019 (Annexure P5) for recovery of arrears of maintenance of Rs.1,74,000/-. Subsequently, the petitioner filed an application dated 16.08.2021 (Annexure P6) before the learned Judicial Magistrate, 1<sup>st</sup> Class, Malerkotla for setting aside order dated 15.12.2017 whereby the petitioner had been proceeded against ex parte; and ex parte final order dated 01.06.2018 passed in the petition under Section 125 Cr.P.C.

8. In the meantime, the petitioner had also filed the present application before the learned Family Court, Sangrur Camp at Malerkotla, thereby praying that the application of the respondent No.2 dated 01.06.2019 (Annexure P5) seeking recovery of maintenance from the

petitioner be stayed till the disposal of the application dated 16.8.2021 filed by the petitioner (Annexure P6). Vide the impugned order the said application of the petitioner, has been dismissed for the following reasons:-

*“3. I have heard both the learned counsel for the parties and have gone through the record carefully. It is well settled law that merely on this ground that the proceedings for setting aside the exparte orders dated 15.12.2017 and 01.06.2018 are pending, the proceedings in the application for recovery of maintenance allowance can not be stayed. Moreover, the present application seems to have been filed by the respondent just to escape from his liability to make payment of maintenance allowance. Hence, the present application filed by the respondent being devoid of any merits is hereby dismissed. Now, to come up on 21.5.2024 for making payment.”*

(Emphasis added)

9. I find no ground whatsoever is made out to interfere in the impugned order. I am in agreement with the above said observation of the learned Family Court that from the entire conduct of the petitioner, it appears that he is only attempting to escape his moral and legal responsibility towards the wife and minor child and/or delay the maintenance proceedings on one pretext or the other.

10. In view of the above, present petition is **dismissed**.

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

29.11.2024  
Sunena

(Nidhi Gupta)  
Judge

Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No