

Neutral Citation No. 2024:PHHC:043961

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRR(F)-1023-2022 (O&M)
Decided on : 02.04.2024

Vinod Kumar

...Petitioner

Versus

Sumer Kumari and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Balraj Singh Sidhu, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. The present revision petition has been filed against the order dated 26.09.2022, passed by the learned Principal Judge, Family Court, Bathinda (*hereinafter referred to as 'Family Court'*) in maintenance petition No. MNT125/233/2022, titled as ***Sumer Kumari and another vs. Vinod Kumar***, whereby an application as filed by the present petitioner under Section 126(2) Cr.P.C. for setting aside the order dated 14.09.2021 proceeding the petitioner as ex-parte as passed in maintenance petition filed by the respondents under Section 125 Cr.P.C., bearing No. MNT/100/2020 having the same title as above as well as the final order dated 23.12.2021, whereby maintenance to the tune of Rs. 10,000/- per month to respondent No. 1 and Rs. 5,000/- per month to respondent No. 2 had been directed to be paid by the petitioner, had been dismissed.

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2. Brief facts relevant for the purpose of disposal of the present petition are that the respondents had filed aforementioned petition under Section 125 Cr.P.C. seeking maintenance from the present petitioner by alleging that the petitioner, who was husband of respondent No. 1 and father of respondent No. 2, had neglected and refused to maintain them. In the above said petition, the present petitioner initially put up appearance before the Family Court. However, subsequently, he absented himself and vide order 14.09.2021, he was proceeded against ex-parte and thereafter, after considering the ex-parte evidence produced on record by the present respondents, the Family Court passed order dated 23.12.2021 by holding that it was proved that the petitioner had neglected and refused to maintain the respondents and was liable to pay maintenance to them. Feeling aggrieved, the petitioner filed aforementioned petition under Section 126(2) Cr.P.C. seeking setting aside the orders dated 14.09.2021 and 23.12.2021, which had been dismissed by the Family Court, vide order dated 26.09.2022 by holding that no grounds for setting aside the impugned orders dated 14.09.2021 and 23.12.2021 had been made out.

3. It is argued by learned counsel for the petitioner that impugned order dated 26.09.2022 declining the prayer made by the petitioner for setting aside the orders dated 14.09.2021 and 23.12.2021 is liable to be set aside as while passing the same, the Family Court ignored the fact that it was the respondent No. 1, who in fact had deserted the petitioner and had even thrown him out of the residential house bearing No. 240, situated at Silver Oak Part-II Colony, Bathinda, which was purchased with the income of the petitioner. She also owned half share in shop No. 91/A, Auto Market, Bathinda, which was also purchased from the money earned by the

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petitioner. She had sufficient source of rental income from the aforesaid shop and was also earning an amount of Rs. 10,000/- by imparting tuitions to students. She had also done a course in Pharmacy and had given her licence of Pharmacy to some person, for which, she was fetching an income of Rs. 5,000/- per month. It is argued that the Family Court ignored all these facts while dismissing the application moved by him. Therefore, it is urged that the present petition deserves to be allowed.

4. I have heard learned counsel for the petitioner and have also gone through the impugned order passed by the Family Court as well as other documents placed on record by the present petitioner and on a perusal of the same, I am satisfied that no ground has been made out for interfering with the order passed by the Family Court on 26.09.2022. On a perusal of this order as well as the order passed by the Family Court, it is clearly revealed that after filing of the petition under Section 125 Cr.P.C. by the respondent No. 1, the petitioner had initially appeared in response to the notice before the Family Court and had sought time to file reply. However, thereafter, he absented himself and was proceeded against ex-parte on 14.09.2021. The plea as taken by the petitioner was that since after his appearance before the Family Court, due to intervention of Panchayat, respondent No. 1 had allowed him to stay in the joint matrimonial house and had also assured to withdraw the petition seeking maintenance, therefore, believing her assurance, he had not appeared before the Family Court and that is why, he was proceeded against ex-parte. Another plea taken by him was that he had come to know about the order dated 14.09.2021 and 23.12.2021 only on 21.05.2022 through his sister-in-law, who is in fact real sister of respondent No. 1, married with his brother.

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5. The Family Court had recorded that no plausible reason whatsoever had been given by the present petitioner for absenting himself from the proceedings under Section 125 Cr.P.C. On perusal of record, I am also of the considered opinion that the plea with regard to his remaining absent w.e.f. 14.09.2021 from the Family Court cannot be considered to be a reasonable plea in view of the fact that no material whatsoever has been produced by him either before the Family Court or before this Court to prove the factum of any Panchayat having been convened between the parties and about his staying together with respondent No. 1 or about the fact that any writing was executed between the petitioner and respondent No. 1 giving assurance with regard to withdrawal of maintenance petition. As such, the plea as taken by the petitioner that his absence w.e.f. 14.09.2021 was unintentional and *bona fide*, cannot be considered to be genuine.

6. So far as the final order dated 23.12.2021, whereby he was directed to pay maintenance to the respondents as mentioned above, is concerned, it may be stated that this order had also been challenged by the petitioner after a gap of about eight months i.e. beyond the period of limitation and no satisfactory explanation has come on record with regard to this fact. Neither any material has been produced on record by him to show that respondent No. 1 is having sufficient source of income and does not deserve grant of any maintenance from him. He is not shown to have sought any opportunity from the Family Court to produce evidence to show this fact even in the application filed by him under Section 126(2) Cr.P.C. The Family Court, after passing a detailed and well reasoned order on 26.09.2022, had declined the prayer made by the petitioner for setting aside the orders dated 14.09.2021 and 23.12.2021. In view of the discussion as

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made above, I see no reason to allow the present petition. Accordingly, the same is dismissed.

02.04.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes