

122

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-48310-2024 (O&M)
Date of decision: 26.09.2024

Buta Singh Gill

... Petitioner

Vs.

Karnail Kaur

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Dixit Garg, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. Present petition has been preferred under Section 528 of the
Bhartiya Nyaya Nagrik Suraksha Sanhita, 2023 (for short 'BNSS') against
the impugned order dated 25.08.2023 (Annexure P-6) passed by learned
Principal Judge, Family Court, Ludhiana Camp at Khanna in the petition
bearing case No.MNT125/62/2022 titled as '*Karnail Kaur Vs. Buta Singh*',
whereby defence of the petitioner was struck off.
2. The marriage between the petitioner and respondent No.1 was
solemnized on 12.12.1990 according to Sikh rites and rituals. Out of the said

2024:PHHC:127690



wedlock, two children i.e. one daughter and one son were born and now they are major. The daughter is married and son is residing with the respondent. However, due to temperamental differences, marital discord ensued between the parties and the respondent filed a petition under Section 125 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking maintenance and in the said proceedings, defence of the petitioner was struck off by learned trial Court vide impugned order dated 25.08.2023 (Annexure P-6).

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner put in appearance pursuant to the notice issued to him on 24.03.2023. Thereafter, the case was adjourned to 28.04.2023 and on the said date, the Presiding Officer was on leave, therefore, the case was adjourned to 28.07.2023. On the aforementioned date i.e. 28.07.2023, none of the Bar members appeared in the Courts, as the Bar passed a resolution to suspend the work and next date was fixed as 25.08.2023 and defence of the petitioner was struck off on that date. To substantiate his contentions, learned counsel for the petitioner relies upon the zimni orders passed by learned trial Court, which are appended with the present petition as Annexures P-3 to P-5. It is further contended that perusal of Annexures P-3 to P-5 clearly indicates that no effective opportunity was granted to the petitioner and even after striking off his defence, the respondent is not coming forward and the case is still

2024:PHHC:127690



pending for respondent's evidence. Learned counsel for the petitioner undertakes that the petitioner will file reply as well as affidavit declaring his assets, income and liabilities on the next date of hearing fixed before learned Family Court.

4. I have heard learned counsel for the petitioner and perused the record of the case with his able assistance.

5. A perusal of the order dated 25.08.2023 (Annexure P-6) indicates that learned Family Court had categorically held that despite availing three effective opportunities to file the reply, the petitioner failed to file the reply and even he did not furnish his affidavit declaring his assets, income and liabilities and the case was adjourned to 29.09.2023 subject to last opportunity with costs of Rs.1,000/-.

6. Denial of an opportunity to the accused to present the best available evidence or have an effective and substantial hearing, in order to prove his defence, which is in direct violation of the right to free and fair trial enshrined under Article 21 of the Constitution of India as well as the principles of natural justice.

7. Pertinently, a two Judge Bench of the Hon'ble Supreme Court in the case of ***Rajnish Vs. Neha and another, (2021) 2 SCC 324*** has relied upon its judgment rendered in ***Kaushalya Vs. Mukesh Jain, (2020) 17 SCC***

2024:PHHC:127690

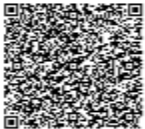


822 to categorically hold that the Court may proceed to strike off the defence of the respondent if the errant spouse, in spite of being given a reasonable opportunity to participate in the trial, appears to be unjustly prolonging the it. Reliance in this regard can also be placed on the judgment of this Court in *Rani Vs. Parkash Singh, AIR 1996 P&H 175*. In fact, a Division Bench of the Delhi High Court in *Smt. Santosh Sehgal Vs. Shri Murari Lal Sehgal, AIR 2007 Del 210* has gone to the extent of holding that an appeal filed by the wife deserves to be allowed in view of the negligence displayed by the husband towards clearance of arrears of maintenance.

8. Be that as it may, such drastic steps may only be taken as a last resort, when the Court is convinced that the errant spouse is willfully abnegating his liability. The Court must not overlook such deliberate disobedience, as the same can be deterrent to the cause of justice and defeats the purpose of granting maintenance under Section 125 Cr.P.C.

9. Adverting to the case at hand, the petitioner has undertaken to file the reply and the affidavit declaring his assets, income and liabilities on the next date fixed before learned Family Court. As such, this Court does not find the need to curtail right of the petitioner to file the reply as well as his affidavit declaring his assets, income and liabilities. Moreover, efforts must be made to ensure that, as far as possible, the parties involved are allowed to

2024:PHHC:127690



present the best available evidence as that would lend credibility to the judicial proceedings.

10. Accordingly, the present petition is allowed and the impugned order dated 25.08.2023 passed by learned Additional Principal Judge, Family Court is hereby set aside.

11. As undertaken by him, the petitioner is granted two effective opportunities to file the reply as well as his affidavit declaring his assets, income and liabilities, to the petition filed by the respondent under Section 125 Cr.P.C. seeking maintenance, however, subject to payment of costs of Rs.5,000/- to be deposited with District Legal Services Authority, Ludhiana, for wasting precious time of this Court.

12. All the pending miscellaneous application(s), if any, shall also stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

26.09.2024
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No