



103

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-1265-2024 (O&M)

Date of decision: 04.11.2024

Dhanwant Singh

... Petitioner

Vs.

Damanjot Singh Badaisha

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sandeep S. Majithia, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

CRM-43340-2024

1. This application has been filed under Section 528 of Bharatiya
Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') for placing on record
certain documents as Annexures P-14 to P-17.

2. In view of the averments made in the application, same is
allowed and Annexures P-14 to P-17 are taken on record subject to all just
exceptions.

CRR(F)-1265-2024

3. The present revision petition has been preferred against the
impugned order dated 19.09.2024 passed by learned Additional Principal
Judge, Family Court, Ludhiana, vide which, in the proceedings initiated under



Section 125 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') (now Section 144 of BNSS), the application for revival of petition titled as '*Dhanwant Singh Vs. Damanjot Singh Badaisha*' for adjudication on merits after recalling of the order dated 22.03.2023 and to deposit 50% of the amount of maintenance, as per the order dated 23.01.2023, has been dismissed.

4. Brief facts of the case are that the marriage between the petitioner and mother of the respondent, namely Amandeep Kaur, was solemnized on 14.04.2016 according to Sikh rites and rituals. Out of this wedlock, one male child i.e. the respondent was born on 13.06.2017. However, matrimonial dispute ensued between the couple and the respondent, through his mother Amandeep Kaur, filed a petition under Section 125 Cr.P.C. (now Section 144 of BNSS), in which, vide ex-parte order dated 20.01.2020, learned Family Court granted the maintenance of Rs.6,000/- per month in favour of the respondent. When the petitioner did not pay any amount of maintenance, the respondent moved an application for execution of the order dated 20.01.2020. The petitioner came to know about the ex-parte order only on 16.07.2022, when he appeared before learned Family Court regarding the summons received by him in the execution application. Thereafter, the petitioner filed an application dated 16.08.2022 (Annexure P-10) seeking setting aside the ex-parte order dated 20.01.2020 and the same was allowed vide order dated 23.01.2023 (Annexure P-11) with a condition that the petitioner would deposit 50% of the total maintenance amount due till



23.01.2023 within a period of two months from that date. When the petitioner failed to comply with the order dated 23.01.2023 within the stipulated time, learned Family Court, vide order dated 22.03.2023 (Annexure P-12), recalled the order dated 23.01.2023. The petitioner changed his earlier counsel and engaged a new counsel, who moved an application on 04.09.2024 (Annexure P-13) for recalling of the order dated 22.03.2023 (Annexure P-12) with permission to deposit 50% of the amount of maintenance in compliance of the order dated 23.01.2023 (Annexure P-11), however, learned Family Court dismissed the same vide impugned order dated 19.09.2024. Feeling aggrieved, the petitioner has approached this Court by way of filing the present petition.

5. Learned counsel for the petitioner, *inter alia*, contends that wife of the petitioner, namely, Amandeep Kaur moved a complaint against the petitioner and his family members and during pendency of the same, a compromise dated 01.05.2017 was effected between the parties, in which it was agreed to file a petition under Section 13-B of Hindu Marriage Act, 1955 (for short 'HM Act') before learned Family Court at Ludhiana. It was mutually agreed that the petitioner would pay Rs.2.00 lacs to Amandeep Kaur, mother of the respondent, towards permanent alimony. At that time, Amandeep Kaur was pregnant. In the compromise, it was agreed that custody of 'to be born child' would be handed over to the petitioner and Amandeep Kaur would not claim his/her custody. Thereafter, she filed a petition under Section 13-B of HM Act (Annexure P-3), in which after recording the first



motion statements, the case was fixed for recording second motion statements on 07.11.2017 and in the meantime, the respondent took birth. In her statement recorded at second motion (Annexure P-4), Amandeep Kaur stated that the male child would remain with her and she would take care of him and the petitioner did not object to the said statement to avoid further dispute and keeping in view the needs of newly born child and the petition under Section 13-B of HM Act was allowed on 07.11.2017 and marriage between the petitioner and Amandeep Kaur was dissolved by passing a decree of divorce with mutual consent. A perusal of the orders passed by learned Family Court indicates that Amandeep Kaur produced Mr. S.K. Dhir, Advocate, whose name is not mentioned in the directory of Advocates of District Bar Association, Ludhiana, on behalf of the petitioner and he appeared on several dates and ultimately, she succeeded in getting the ex-parte order, granting maintenance of Rs.6,000/- per month in favour of the respondent. On coming to know about the ex-parte order dated 20.01.2020 on 16.07.2022, he moved an application for setting aside the said order and the same was allowed vide conditional order dated 23.01.2023 that the petitioner would deposit 50% of the maintenance amount due till date date within a period of two months from 23.01.2023. However, when the petitioner failed to pay the arrears of maintenance, learned Family Court, vide order dated 22.03.2023 recalled the order dated 23.01.2023. Thereafter, the petitioner engaged a new counsel, who assured to get waived off the condition of deposit of 50% of the maintenance amount by moving an application. The petitioner in the month of



August, 2024 engaged another counsel and he filed a petition under Section 6 of Hindu Minority and Guardianship Act and under Section 25 of the Guardian and Wards Act seeking custody of the respondent, which shows that he was never running away from his responsibility of taking care and custody of the child.

6. Learned counsel for the petitioner further contends that on asking of new counsel, the petitioner brought the case file from his earlier counsel and then he came to know that the application for waiving off the condition of deposit of 50% of the maintenance amount was never filed. Now his new counsel moved an application dated 04.09.2024 (Annexure P-13) seeking recalling of the order dated 22.03.2023 (Annexure P-12), however, the same was dismissed vide impugned order dated 19.09.2024, without considering the aforesaid facts and circumstances of the case.

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

8. The object and purpose behind granting maintenance is to ensure that the dependent 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.

9. 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.”

10. 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.



11 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 in ***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.”

12. From perusal of the record, it transpires that initially, the petitioner appeared before learned Family Court and thereafter, he stopped appearing, as such, he was proceeded against ex-parte on 16.01.2019. In the meantime, in view of the compromise effected between the parties, in the petition under Section 13-B of HM Act, marriage between the petitioner and Amandeep Kaur was dissolved by a decree of divorce by way of mutual consent and in the said proceedings, the petitioner did not object to the statement made by Amandeep Kaur that the child would remain with her. Thereafter, the petition under Section 125 Cr.P.C. (now Section 144 of BNSS) was allowed vide ex-parte order dated 20.01.2020. The application filed against the said order was also allowed on 23.01.2023 with the condition that



the petitioner would deposit 50% of the maintenance amount due till 23.01.2023, however, he failed to comply with the said order and learned Family Court, vide order dated 22.03.2023, recalled the order dated 23.01.2023. Learned Court below, while dismissing the application (Annexure P-13), vide impugned order dated 19.09.2024, has rightly observed that after expiry of more than 19 months of passing of the order dated 23.01.2023, the petitioner has filed the said application just to wriggle out his responsibility to maintain the minor child. From perusal of the record, it is clear that the petitioner has not taken care of the minor child since his birth nor he paid 50% of the maintenance amount.

13. Keeping in view the aforementioned facts and circumstances, this Court finds no perversity or illegality in the impugned order, which warrants interference by this Court. Accordingly, the present petition is dismissed being bereft of any merit.

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

04.11.2024

vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No