



**215 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR(F)-1213-2022 (O&M)

Reserved on: 14.05.2024

Pronounced on: 15.05.2024

Tejinder Kumar Saggar @ Lovely

....Petitioner

Versus

Samridhi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Nishchal Chetanya Manchanda, Advocate
for the petitioner

Mr. M.S. Kathuria, Advocate for respondent No.1.

Mr. Rahul Chauhan, Advocate
for the respondent No.2**HARPREET SINGH BRAR, J.**

1. The present revision petition is preferred seeking setting aside of impugned order dated 13.09.2022 passed by learned Principal Judge, Family Court, Kurukshetra Camp Fort at Shahbad whereby respondent no.1-minor daughter was granted Rs. 6000/- per month payable by the petitioner-father and Rs. 5,000/- per month payable by respondent No.2-mother, as maintenance under Section 125 Cr.P.C.

2. Briefly, the facts are that the marriage between the petitioner and respondent No.2 was solemnised on 26.11.2004 and respondent No.1 was born out of this wedlock on 07.12.2005. However, the marriage between the petitioner and respondent No.2 could not subsist and they obtained a divorce by mutual consent on 26.07.2012. The custody of respondent No.1 remained with her mother-respondent No.2, who solemnised a second marriage on 23.10.2015



with one Deepak and out of this wedlock, a female child was born. Thereafter, respondent No.1-minor daughter was forced to live under the care of her maternal grandfather. Being unable to manage the expenses concerning respondent No.1, an application under Section 125 Cr.P.C. was moved wherein the petitioner-father was directed to pay Rs. 6,000/- per month to her as maintenance, while respondent No.2- mother was directed to pay Rs. 5,000/- per month towards the same, vide impugned order dated 13.09.2022.

3. Learned counsel for the petitioner *inter alia* contends that the application under Section 125 Cr.P.C. was filed in the name of respondent No.1-minor daughter through her maternal grandfather namely Pawan Kumar Sethi, who has no *locus standi* to initiate such proceedings. The same has been filed in connivance with respondent No.2-mother in order to humiliate the petitioner. Further, it was agreed during the divorce proceedings, that respondent no. 1-minor daughter would remain in the custody of respondent No.2-mother. In accordance with the terms of the compromise deed effected on 15.01.2012 and the petition under Section 13B, Hindu Marriage Act, 1955, the petitioner-father has already paid Rs. 4,25,000/- to respondent No.2-mother and it was agreed that she will not claim any maintenance towards herself or their minor daughter-respondent No.1. Moreover, the petitioner has also remarried and a child was born out of this wedlock. The learned Court below has fallen into error by not considering the lump sum amount already paid while passing the impugned order dated 13.09.2022.

4. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner-father and respondent No.2-mother have been granted divorce on 26.07.2012



under Section 13-B of the Hindu Marriage Act, 1955. Their minor daughter-respondent no. 1 has been granted monthly maintenance of Rs. 11,000/- per month vide the impugned order dated 13.09.2022, directing the petitioner to pay Rs. 6,000/- per month, while Rs. 5,000/- per month is payable by respondent No.2

5. A two Judge bench of the Hon'ble Supreme Court in ***Nagendrappa Natikar vs. Neelamma, 2013(2) RCR (Criminal) 424*** has held that even though the wife has accepted permanent alimony under Section 125 Cr.P.C. the remedy available to her under the Hindu Adoption and Maintenance Act, 1956 will not be foreclosed. Speaking through Justice K.S. Radhakrishnan, the following was observed:

“10. Section 125 Criminal Procedure Code is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children. Section 125 is not intended to provide for a full and final determination of the status and personal rights of parties, which is in the nature of a civil proceeding, though are governed by the provisions of the Criminal Procedure Code and the order made under Section 125 Criminal Procedure Code is tentative and is subject to final determination of the rights in a civil court.”

6. 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 ***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.”



7. In view of the discussion above, this Court is of the considered opinion that the petitioner cannot be allowed to take shelter of the compromise arrived at between him and respondent No.2 during their divorce proceedings to circumvent his duty to maintain his minor daughter i.e. respondent No.1. Therefore, the present petition is dismissed, being bereft of any merit.

8. Pending miscellaneous application(s), if any, also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

15.05.2024
Neha

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