



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

1. **CRR(F)-104-2019 (O&M)**
Date of Decision:26.03.2025

Shiv Kumar Sharma

.....Petitioner

Versus

Kavita Sharma and others

.....Respondents

2.

CRR(F)-389-2019 (O&M)

Kavita Sharma and others

.....Petitioners

Versus

Shiv Kumar Sharma

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. H.S. Ghuman, Advocate for the petitioner(s)
in CRR(F)-104-2019 and for respondent(s)
in CRR(F)-389-2019.

Mr. Shobhit Phutela, Advocate for petitioner(s)
in CRR(F)-389-2019 and for respondent(s)
in CRR(F)-104-2019.

JASGURPREET SINGH PURI J.(Oral)

1. Both the cases are taken up together for final disposal with the consent of the learned counsels for the parties, as the *lis* involved is interconnected.



2. CRR(F)-104-2019 has been filed by the petitioner-husband, challenging the order by which the petition under Section 125 Cr.P.C. was decided by learned Family Court, while CRR(F)-389-2019 has been filed by the petitioners-wife and children seeking enhancement of maintenance.

CRR(F)-389-2019

3. Mr. Shobhit Phutela, Advocate, appearing on behalf of the petitioners-wife and children submitted that the petitioners may be permitted to withdraw the present petition with a liberty and in order to enable them to file an application under Section 127 of Cr.P.C. (now Section 146 of BNSS Act) before appropriate Court on various grounds which are available to them in accordance with law.

4. Dismissed as withdrawn with liberty as aforesaid.

CRR(F)-104-2019

5. The present revision petition has been filed challenging the order dated 17.01.2019 passed by learned Principal Judge, Family Court, Kurukshetra, whereby the petition under Section 125 Cr.P.C. was allowed, and maintenance was directed to be granted to the respondents. Respondent No. 1 is the wife, while respondents No. 2 to 4 are children. The petition under Section 125 of Cr.P.C. was filed in the year 2011 and as per the date of birth mentioned in the memo of parties, all the children were minor at the time of filing the petition, which was subsequently allowed

6. Learned counsel, appearing on behalf of the petitioner, submitted that learned Family Court had erroneously allowed the petition under Section 125 of Cr.P.C. because the respondent-wife had withdrawn from the society of



the petitioner without any justifiable cause and due to this reason, the matrimonial dispute arose and therefore, respondent-wife and their children were not entitled to grant of any maintenance. He also submitted that even otherwise also petitioner had filed a petition for the grant of divorce under Section 13 of the Hindu Marriage Act, which was dismissed on 18.08.2018 by learned Additional District Judge, Kaithal. The aforementioned judgment was challenged by the present petitioner-husband by filing FAO-M No. 253 of 2018 before this Court and a Division Bench of this Court allowed the appeal based on the facts and circumstances, observing that there had been an irretrievable breakdown of marriage between the parties and no useful purpose would be served by continuing the relationship between the husband and wife and rather it will be in the interest of the parties to dissolve the marriage. He also submitted that in the aforesaid judgment, which was passed on 24.02.2025, liberty was granted to wife to file an appropriate application before learned Family Court for grant of permanent alimony. It was further directed that if any such application is filed by respondent-wife, the same shall be considered and decided by the concerned Court in accordance with law within a period of 06 months from the date of filing. He also submitted that once the aforesaid liberty was granted to the wife to file an appropriate application for the grant of permanent alimony, the order of maintenance passed by learned Principal Judge, Family Court, Kurukshetra, is liable to be set aside. This is because it now falls within the ambit and discretion of the respondent-wife to make an application in accordance with the judgment of Division Bench of this Court, which allowed the aforesaid FAO and dissolved



the marriage between the parties. He submitted that, in this way, the impugned order dated 17.01.2019 is liable to be set aside

7. On the other hand, learned counsel, appearing on behalf of the respondents, submitted that although a decree of divorce has been passed by a Division Bench of this Court on the basis of the fact that the parties cannot live together in the future due to irretrievable breakdown of the marriage, the mere fact that liberty was granted to the respondent-wife to file an appropriate application before learned Family Court seeking permanent alimony does not mean that any embargo or bar has been created by the judgment passed by learned Division Bench of this Court in the aforesaid FAO. He argued that the *lis* in the present case is solely concerned with assailing the order passed by learned Family Court regarding the petition under Section 125 of Cr.P.C., which is an independent statutory right not only of the wife but also of the children. He also submitted that in this way the argument which has been raised by learned counsel for the petitioner is not sustainable

8. He further submitted that this is a case where the respondent-wife and her three children, who were minors at the time of filing the aforesaid petition, have been granted maintenance of only Rs. 25,000/- per month, i.e., Rs. 16,000/- to respondent No. 1 and Rs. 3,000/- each to the three children, which cannot be said to be excessive. While referring to the impugned order, he submitted that according to the salary slips of the petitioner-husband, his income was Rs. 36,740/- per month at that time and he drew a net salary of Rs. 31,523/- per month in the year 2013. He submitted that it has been proved not only that he had been drawing the aforesaid salary while working as a



Science Teacher at the Government Middle School, Keorak, District Kaithal, but also that, apart from the above, he owned 10 acres of agricultural land and this ownership was also proved on record. Besides that, he was also shown to be a partner in one of the firms, namely Bhagwan Parshuram Trading Co., Shop No. 1, Dhand, and he was also drawing income from the aforesaid partnership and the income of the petitioner was also proved on record. He further submitted that however so far as the wife is concerned, she does not have any source of income at all nor the petitioner has been able to prove on record any such income of the respondent-wife. He also submitted that, apart from the above, the marriage between the parties is not in dispute, particularly in view of the fact that the marriage has now been dissolved by a judgment of a Division Bench of this Court, as aforesaid, bearing FAO-M-253-2018 and so far as the children are concerned also there is no dispute with regard to the same that they were born out of the wedlock of the parties.

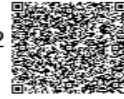
9. He further submitted that, out of the three children, who are respondents No. 2 to 4 in the present case, two are girls and one is a boy who is a person with disabilities and intellectual disability, being a specially-abled child. It was probably because of the aforesaid condition of the child that the matrimonial discord arose between the parties and the respondents were having their statutory rights under Section 125 of Cr.P.C. for grant of maintenance. He also submitted that it is not only the legal responsibility of the petitioner to maintain the wife and children, but also a moral, social, and economic obligation to maintain them, especially in view of the fact that the respondent-wife has no source of income, nor the same has been proved on



record by the petitioner. He also submitted that in view of the aforesaid facts and circumstances, the present petition is liable to be dismissed.

10. I have heard the learned counsels for the parties.

11. This is a case where the dispute concerns the grant of maintenance to respondent No. 1 (wife) and respondents No. 2 to 4 (three children), two of whom are girls and one is a boy, who is stated to be a specially abled child. At the time of filing the petition, all the children were admittedly minors. An argument was raised by learned counsel appearing on behalf of the petitioner that, since the marriage has been dissolved between the parties by a Division Bench of this Court in FAO-M-253-2018, wherein liberty was granted to the respondent-wife to file an appropriate application before the concerned court for fixation of permanent alimony, the present impugned order is liable to be set aside, as no such maintenance could have been granted. The argument raised by learned counsel for the petitioner is totally misconceived and unsustainable. The right to claim maintenance under Section 125 of Cr.P.C. accrued to respondent-wife when she filed the petition in the year 2011, and the same was decided in the year 2019. A divorce petition was filed by the petitioner before the learned Additional District Judge, Kaithal, but the same was dismissed. However, first appeal filed by the petitioner was allowed by a Division Bench of this Court, and the marriage was dissolved recently on 24.02.2025. The right that accrued to the respondents- wife and her children was a statutory right emanating from Section 125 of Cr.P.C., which is an independent statutory right and cannot be taken away by the mere fact that a decree of divorce has now been granted.



Apart from the above as per learned counsels for the parties, there is no settlement of any permanent alimony or any adjustment of any maintenance etc. granted in the aforesaid decree. Even as per Section 125 (1) Explanation (b) of Cr.P.C., the expression 'wife' would include a divorced wife as well. Not only this, the impugned order was passed in the year 2019 and has been assailed by filing a revision petition before this Court in the present case. Therefore, the aforesaid impugned order cannot be set aside on the ground raised by learned counsel for the petitioner.

12. On merits, a perusal of the impugned order would show that it has been proved on record that the petitioner is working as a Science Teacher in a Government School and his ownership of 10 acres of land has also been proved. He was also shown to be a partner in a private firm. His income in the year 2013 was approximately Rs. 36,740/- per month which was also proved on record. As of today, his income would likely exceed Rs. 80,000/- per month after more than 12 years have passed. A perusal of the impugned order would also show that the petitioner has not been able to prove any income of the respondent-wife. The marriage between the parties is not in dispute and it is also undisputed that three children were born out of the wedlock. Additionally, it is not in dispute that all three children are living with the respondent-wife. One of the children, the male child, is stated to be specially abled. Out of the aforesaid total salary of the petitioner, which was stated to be Rs. 36,740/-, the total maintenance granted was Rs. 25,000/-. The petitioner was stated to be the owner of 10 acres of agricultural land. Therefore, this Court is of the considered view that no illegality or perversity can be found in



the impugned order passed by the learned Family Court. It is not only a statutory obligation upon the petitioner to maintain his wife, who is not working and has no source of income, and all the minor children, but it is also a social, economic and moral responsibility of the petitioner to maintain his wife and children.

13. In view of the above, the present petition is hereby dismissed.
14. Pending application(s), if any, shall stand disposed of.
15. All the interim order(s), passed in the present case, shall stand vacated.

(JASGURPREET SINGH PURI)
JUDGE

26.03.2025

shweta

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