



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

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CRM-M-53153-2018
Date of decision: 16.09.2025

NARGESH KUMAR

.....Petitioner

VERSUS

CHARAN DASS

.....Respondent

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Harsh Thakur, Legal Aid Counsel
for the petitioner.

Mr. Aayush Bansal, Advocate (Legal Aid Counsel)
for the respondent.

VINOD S. BHARDWAJ, J. (Oral)

The present petition has been filed for seeking quashing of the order dated 12.07.2017 whereby the District Judge Family Court, Pathankot awarded maintenance @ Rs. 5000/- per month in favour of the respondent, in a petition under Section 125 Cr.P.C.

2. Despite service, no one chose to appear on behalf of the respondent. The matter had also been relegated to the Mediation and Conciliation Centre of this Court, considering that the respondent is the father of the petitioner herein, for exploring possibility of an amicable resolution of the dispute. However, the respondent did not appear before Mediation and Conciliation Centre of this Court, consequently, the matter was sent back to the High Court for adjudication. Even thereafter, no one appeared on behalf of the respondent and even the Counsel for the petitioner



stopped appearing since 14.03.2024, hence, Legal Aid Counsel was appointed by this Court on behalf of both the parties. They have been heard at length.

3. Legal Aid Counsel appearing on behalf of the petitioner contends that a perusal of the impugned order shows that notice was sent through registered post and thereafter, despite the service report having not been received back, yet, the petitioner was ordered to be proceeded against ex-parte on an assumption of service being effected. He places reliance on the judgment of Patna High Court in the matter of ***“Mohd. Mustkim @ Bhola versus Bibi Anuja Khatoon”*** passed in Cr.W.J.C. No. 229 of 1996 dated 12.09.1996 as well as the judgment of Bombay High Court in the matter of ***“Umakant Bhaskarao Nawarkhele versus Sneha Umakant Nawarkhele and others”*** passed in Criminal Revision Application No. 21 of 2014 dated 05.02.2014 to contend that service of summons by registered post is not valid in proceedings under Section 125 Cr. P.C. and that under such circumstances, the summons are required to be served as per the procedure prescribed in the Code of Criminal Procedure (now Bharatiya Nagrik Suraksha Sanhita). Hence, the said service of notice could not be deemed to be a valid service. He further contends that since the petitioner never entered appearance on behalf of the respondent, hence, the actual income of the petitioner could never be assessed. The family Court has assumed the income of the petitioner as Rs. 25,000 to Rs.30,000/- on the basis whereof, a sum of Rs. 5,000/- has been awarded as the maintenance. It is submitted that the petitioner was engaged as a Mason for work on daily wages at relevant point in time. The wages were much less and besides it

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was not a regular employment, hence, such high assessment of income could not have been assumed.

4. Counsel for the respondent however submits that the applicant-respondent was not being maintained and under the said circumstances, the Court had to pass an order to grant maintenance. It is submitted that the petitioner being the biological son of the respondent-applicant is obligated to maintain his aged father in his advancing years of age.

5. He is, however, not in a position to dispute that the petitioner was proceeded against ex-parte and that apart from notice by a registered post, no other effort was made to effect service on the petitioner. He is also not in a position to dispute the judgments relied upon by the petitioner.

6. Taking into consideration the aforesaid factual aspect as well as the judgment relied upon by Counsel for the petitioner, which is not controverted by Counsel for the respondent, I deem it appropriate to allow the present petition.

7. The order dated 12.07.2017 passed by District Judge Family Court, Pathankot is accordingly set aside, at this stage and the matter is remanded to the Family Court, Pathankot for passing a fresh order in accordance with law.

(VINOD S. BHARDWAJ)**SEPTEMBER 16, 2025****JUDGE***Vishal Sharma*

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No