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

Sr. No.114**CRR(F)-2-2025 (O&M)****Date of decision : 28.01.2025**

Tek Chand

..... Petitioner

VERSUS

Manjul and others

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Divij Datt, Advocate for
Mr. Ankur Sharma, Advocate, for the petitioner.

KIRTI SINGH, J. (Oral)

1. Prayer in the present Criminal Revision petition is for setting aside the order dated 24.10.2024 passed by learned Principal Judge, Family Court, Gurugram whereby the defence of the petitioner has been struck off.
2. The facts in brief are that the respondents had filed a petition under Section 125 Cr.P.C. claiming maintenance allowance with averments that on 04.09.1998, the marriage of respondent No.1 was performed with petitioner as per Hindu rites and ceremonies and out of this wed-lock, respondents No.2 and 3 were born. After marriage, matrimonial disputes ensued between the parties which led to irretrievable break down of marriage. Thereafter, the respondents filed petition under Section 125 of Cr.P.C. for granting of maintenance along with an application for ad-interim maintenance against petitioner before learned trial Court. The application for granting ad-interim maintenance was allowed by learned trial Court and the petitioner was directed to pay Rs. 20,000/- per month to the respondents as interim maintenance vide order dated 14.11.2022.

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3. Learned counsel for the petitioner submits that the petitioner earns a salary of Rs. 48,204/- per month and it is difficult for him to comply with the order of the learned Court. Initially, the arrears amounting to Rs.8,18,000/- were directed to be paid to the respondents and the petitioner paid a sum of Rs.5,70,000/- to the respondents and requested that the remainder sum of Rs.2,48,000/- will be paid on or before next date of hearing before the learned Court and the same was allowed vide order dated 30.09.2024. However, the petitioner despite his best efforts failed to make the payment and the learned trial Court without considering the fact that the income of the petitioner is merely Rs.48,204/- and has already paid a substantial part of the arrears, struck off the defence of the petitioner. Learned counsel for the petitioner contends that the defense was wrongly struck off by the learned trial court vide impugned order dated 24.10.2024, which is not sustainable in law and the petitioner has cleared the arrears accrued, he has relied on affidavit dated 22.01.2025 of the petitioner an bank statement (Annexure P3). It is also argued that learned Family Court without considering the facts and circumstances of the case passed the impugned order and the defence of the petitioner was wrongly struck off.

4. I have heard learned counsel for the petitioner and perused the record.

5. The Hon'ble Apex Court, in "***Rajnish vs. Neha and Another***", **2021 (2) SCC 224**, while discussing the catena of judgments on Enforcement of Orders of Maintenance, observed that the order of maintenance may be enforced by a decree of a Civil Court. However, it was further observed that striking off the defence of the respondent is an order

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which ought to be passed in the last resort, if the Court finds the default to be willful and contumacious. The following observations were made by the Hon'ble Apex Court:-

“ xx xx xx xx

Discussion and Directions on Enforcement of Orders of Maintenance

127. The order or decree of maintenance may be enforced like a decree of a civil court, through the provisions which are available for enforcing a money decree, including civil detention, attachment of property, etc. as provided by various provisions of the CPC, more particularly Sections 51, 55, 58, 60 read with Order 21.

128. Striking off the defence of the respondent is an order which ought to be passed in the last resort, if the Courts find default to be wilful and contumacious, particularly to a dependant unemployed wife, and minor children.

129. Contempt proceedings for wilful disobedience may be initiated before the appropriate Court.

xx xx xx xx”

6. The judgment of the Hon'ble Supreme Court in ***Rajnish (supra)***, clearly establishes that the course of striking off the defence, as employed by the Family Court, should not be adopted casually and in a routine manner. Rather, the said course is to be adopted as a measure of last resort. The Family Court, in the present case, without thoroughly considering the husband's financial means & intentions and without

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applying judicious mind to the supervening circumstances, passed the orders excluding the right of the husband to cross-examine prosecution witnesses as well as to lead his own evidence, in a very casual and cavalier manner. The Family Court failed to take into account that the petitioner had paid a substantial amount of the arrears which were duly accepted by the respondents. The Family Court overlooked a fundamental principle of jurisprudence; the right to plead a defence against any accusation or claim laid against a person, being his cherished legal right to a legal remedy as well as a principle of natural justice, ought not to be tinkered with casually and lightly, without there being willful and contumacious neglect on part of that person qua compliance of the order(s) passed by the Court. In these circumstances the Family Court ought to have afforded a reasonable opportunity to the husband to clear the entire arrears of interim maintenance, which got accumulated, due to one of the reasons being the fixation of interim maintenance.

7. As such the order passed by the Family Court, curtailing the right of the husband to cross-examine the PWs examined by the respondents, to prove their entitlement to claim the maintenance from her petitioner, is clearly not sustainable in law and facts of the case.

8. In view of above discussions, order dated 24.10.2024 passed by the Principal Judge (Family Court), Gurugram is set aside.

9. The matter is remitted back to the Family Court, Gurugram for its adjudication afresh, by affording the husband reasonable opportunity to cross-examine the prosecution witnesses, as well as, to lead his own evidence in the case. However, this opportunity of defence shall be afforded

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to the husband, subject to his clearing the entire arrears of interim maintenance as fixed by the Family Court vide order dated 14.11.2022. The husband shall also be liable to pay the cost of Rs. 30,000/- to the respondents. The parties are directed to appear before the Family Court, Gurugram, either in person or through their counsel on the next date of hearing before it.

Pending application(s), if any, also stands disposed of accordingly.

(KIRTI SINGH)
JUDGE

28.01.2025
Ramandeep Singh

Whether speaking / reasoned
Whether Reportable

Yes/No
Yes/No