



**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. Revision No. 108 of 2023**  
**Reserved on: 19.08.2023**  
**Date of Decision: 13.10.2023**



....Petitioner

Versus



...Respondent

*Coram*

**Hon'ble Mr. Justice Sushil Kukreja, Judge.**

Whether approved for reporting?<sup>1</sup>

For the petitioner: Mr. Ajay Chandel, Advocate.

For the respondent: Mr. Hemant Kumar Thakur,  
Advocate.

**Sushil Kukreja, Judge**

The instant petition has been filed by the petitioner under Section 19(4) of the Family Courts Act, 1984, against order dated 11.01.2023, passed by the Principal Judge, Family Court, Hamirpur, H.P., in Cr.MA No. 45/21, in Main Petition No. 05 of 2021, whereby application under second proviso to Section 125(1) Cr.P.C., for grant of interim maintenance was dismissed, with a prayer to allow the petition and consequently allow the application under second proviso to Section 125(1) Cr.P.C..

2

2. The brief facts of the case are that petitioner, Smt. [REDACTED], filed a petition under Section 125 Cr.P.C. before the learned Court below seeking maintenance. As per the petitioner, she had solemnized marriage with the respondent on 29.10.2019 and after some days the respondent started harassing her. The respondent also started defaming the petitioner for adultery and ultimately she was made to leave her matrimonial house on 18.10.2020, however, the respondent had not made any provision for the maintenance of the petitioner. As per the petitioner, the respondent (husband of the petitioner) is working as a Patwari and he has no other liability, but the respondent refused to maintain the petitioner. Subsequently, the petitioner filed an application under second proviso to Section 125(1) Cr.P.C. seeking interim maintenance and for expenses of the proceedings and prayed for monthly maintenance at the rate of Rs.10,000/-.

3. The respondent, by way of filing reply to the application, contested the claim of the petitioner. As per the respondent, the petitioner has sufficient source to maintain herself, as she is well qualified. Moreover the petitioner has herself deserted the respondent and she was guilty of

adulterous conduct and maintaining illicit relations with someone. The respondent denied the averments made in the application for interim maintenance and lastly prayed for dismissal of the same.

4. The petitioner, by way of filing rejoinder to the application, denied the averments made by the respondent in his reply. The petitioner cited some incidents of domestic violence and averred that she had made a complaint under the Protection of Women from Domestic Violence Act, 2005, which is pending adjudication before the learned Additional Chief Judicial Magistrate, Hamirpur.

5. The learned Principal Judge, Family Court, Hamirpur, H.P., dismissed the application of the petitioner for the grant of interim maintenance, vide order dated 11.01.2023. The petitioner, feeling aggrieved and dissatisfied with the impugned order dated 11.01.2023 filed the instant petition with a prayer to allow the instant petition and to quash and set-aside the order dated 11.01.2023, passed by Principal Judge, Family Court, Hamirpur, H.P., in Cr.M.A. No. 45/21, filed in Main Petition No. 05 of 2021 and consequently to allow the application under second proviso to Section 125(1) Cr.P.C..

6. I have heard learned counsel for the petitioner, learned counsel for the respondent and also gone through the material available on record.

7. The perusal of the record reveals that the learned Trial Court has dismissed the application filed by the petitioner under Section 125(1)(d) of Cr.P.C. on the ground that she has been keeping an extra marital relation and is living in adultery and also that she is well qualified, being M.A. and M.B.A. and also holds a certificate in Computer Science and as such she is perfectly capable of maintaining herself and making a decent livelihood.

8. At this stage, it would be relevant to reproduce the definition of adultery, as per Section 497 IPC, which reads as under:-

**“497. Adultery.-** Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

9. Thus Section 497 IPC provides that whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, is guilty of the offence of adultery. No doubt, as per Section 125(4), no wife shall be entitled to receive an allowance for the maintenance/interim maintenance from her husband, if she is living in adultery, however, only on the basis of whatsapp chats, purported to be that of the petitioner with some other person, it cannot be said that she is living in adultery with some other person.

10. At this stage, except for the whatsapp chats, no concrete material has been placed on record by the respondent in order to show that the petitioner is living in adultery with another person. The question as to whether the petitioner is living in adultery or not can only be decided after leading evidence by both the parties and at this stage only on the basis of whatsapp chats, it cannot be concluded that the petitioner is living in adultery with some other person. Moreover, at this stage, no material has been placed on record by the respondent that the petitioner has got an independent source of income and she is earning

independently. Being well qualified does not mean that she is perfectly capable of maintaining herself and making decent livelihood, as held by the learned Trial Court. The law of maintenance of the country, including Section 125 of the Code of Criminal Procedure, are welfare laws that exist to ensure that the wife, children and parents of an able and capable man are not left to become destitute in cases when they are not capable of maintaining themselves.

11. In view of the facts and circumstances of the instant case, the learned Trial Court had committed a grave error in dismissing the application for interim maintenance filed by the petitioner under Section 125(1)(d) of Cr.P.C., as such the aforesaid application is remanded back to the learned Trial Court for decision afresh in accordance with law, after affording reasonable opportunity of being heard to both the parties.

12. The parties are directed to appear before the learned Trial Court on **20<sup>th</sup> November, 2023**.

13. Petition stands disposed of in above terms, so also the pending application(s), if any.

**13<sup>th</sup> October, 2023**  
(virender)

**( Sushil Kukreja )**  
**Judge**