

Before : Jai Singh Sekhon, J.

PUSHPINDER KAUR,—*Petitioner.*

versus

BALBIR SINGH,—*Respondent.*

Criminal Revision No. 253 of 1989.

9th November, 1990.

Code of Criminal Procedure 1973 (II of 1974)—S. 125—Application for grant of maintenance allowance on behalf of unborn child—Such application—Maintainability of.

Held, that there is no doubt that application under S. 125 of Cr.P.C. on behalf of an unborn child is not maintainable because no refusal or neglect on the part of father to maintain such child can be proved or inferred. Moreover, due to natural or unforeseen circumstances, the birth of a child alive cannot be taken for granted. Thus, due to such like contingencies the filing of application on behalf of the child still in the womb of the mother would introduce vagueness in such like proceedings and such was not the intention of the legislature in enacting this provision providing for speedy maintenance allowance in order to save the wives, children, or parents from becoming destitute.

(Para 4)

Petition for revision under section 401 of Cr.P.C. against the order of the Court of Shri R. S. Sharma, M.A., LL.B., Addl. Sessions Judge, Patiala, dated 30th November, 1988 modifying that of Shri G. S. Dhaliwal, P.C.S., Sub-Divisional Judicial Magistrate, Fatehgarh Sahib, dated 23rd February, 1988 (granting maintenance at the rate of Rs. 400 per month i.e. Rs. 250 in favour of the petitioner and Rs. 150 in favour of her minor son of though he is not petitioner, in this case, having been born after the presentation of this petition from the date of filing of this application but from the date of birth in case of minor son.) accepting the revision petition, so far as it relates to the grant of maintenance to the minor son at the rate of Rs. 150 p.m. and dismissing the application. So far it relates to the grant of maintenance to the respdt. for herself at the rate of Rs. 250 p.m. In other words, the maintenance granted to the minor son at the rate of Rs. 150 per month but the learned trial Magistrate, through the impugned order is hereby set aside while the impugned order so far as it relates to the grant of maintenance to the petitioner at the rate of Rs. 250 per month for herself, is, hereby, affirmed.

P. S. Bhangu, Advocate, for the Petitioner.

Gurnam Singh with Harnek Singh, Advocates, for the Respondent.

JUDGMENT

J. S. Sekhon, J. (Oral)

(1) The sole question involved in **this revision petition is** whether a child born after the institution of the proceedings under section 125 of the Code of Criminal Procedure can be granted maintenance allowance from his father. In other words it can be well said whether such application on behalf of an unborn child is maintainable.

(2) The brief resume of facts relevant for the disposal of this petition is that Mst. Pushpinder Kaur filed an application under section 125 of the Code of Criminal Procedure for claiming maintenance from her husband on 2nd of January, 1985 contending that he had refused and neglected to maintain her. In that application she also claimed Rs. 500 as maintenance allowance for the unborn child. She was blessed with a male child on January 18, 1985. The trial Court awarded maintenance allowance to the tune of Rs. 250 per month to the wife and Rs. 150 per month to the child. On revision filed by Balbir Singh, present respondent, the learned Additional Sessions Judge, Patiala,—*vide* his impugned order dated November 30, 1989 set aside the order of the Trial Court awarding maintenance to the unborn child by holding that the application on behalf of the child was not maintainable. Feeling aggrieved against the said order, the child through his mother Pushpinder Kaur had filed the present revision petition *inter alia* contending that the maintenance to the child having been granted from the date of his birth by the Trial Court there was no illegality or infirmity in that order. Willingness of Balbir Singh, respondent, while appearing as witness before the Trial Court, to maintain the petitioner and his son was also stressed in order to overcome the technical hitch in the maintainability of the application.

(3) I have heard the learned counsel for the parties. The provisions of section 125 (1) of the Code of Criminal Procedure, 1973 reads as under :—

“125. *Order for maintenance of wives, children and parents.*

(1) If any person having sufficient means neglects or refuses to maintain—

(a) his wife, unable to maintain herself, or

Pushpinder Kaur v. Balbir Singh (J. S. Sekhon, J.)

- (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
- (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
- (d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct :

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Explanation.—For the purpose of this Chapter,—

- (a) “minor” means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875), is deemed not to have attained his majority;
- (b) “wife” includes a women who has been divorced by, or has obtained a divorce from her husband and has not remarried.”

The condition precedent for awarding maintenance is if any person having sufficient means neglects or refuses to maintain his wife unable to maintain herself or his legitimate or illegitimate minor child, whether married or not unable to maintain itself.

(4) Thus, there is no doubt that application under this section on behalf of an unborn child is not maintainable because no refusal or neglect on the part of father to maintain such child can be

proved or inferred. Moreover, due to natural or unforeseen circumstances, the birth of a child alive cannot be taken for granted. Thus, due to such like contingencies the filing of application on behalf of the child still in the womb of the mother would introduce vagueness in such like proceedings and such was not the intention of the legislature in enacting this provision providing for speedy maintenance allowance in order to save the wives, children or parents from becoming destitute. No doubt, it will result in hardship to the minor child if the order of cancellation of his maintenance allowance is upheld, yet all the same there is no option but to do so because the application on his behalf was not maintainable till he was born, although the mother had claimed maintenance allowance on behalf of the unborn child in the original application. Moreover, the mother can file a fresh application on behalf of the minor child.

(5) For the reasons recorded above, there is no option but to dismiss this petition. I order accordingly.

S.C.K.

Before : Jai Singh Sekhon, J.

KARTAR KAUR AND OTHERS,—*Petitioners.*

versus

THE STATE OF HARYANA AND ANOTHER,—*Respondents.*

Criminal Misc. No. 4262-M of 1988.

6th December, 1990.

Code of Criminal Procedure, 1973 (II of 1974)—Ss. 156(3) & 482—Criminal complaint filed before Magistrate—Magistrate ordering the registration of case—Under S. 156(3), Magistrate can only direct investigation and cannot direct police to register case—However, such irregularity does not vitiate the entire proceedings—Allegations in complaint found to be specific—F.I.R. not liable to be quashed.

Held, that a bare glance through S. 156 leaves no doubt that these provisions deal with the powers of the Police Officer to investigate cases involving cognizance of offence without the order of the Magistrate. Sub-section (3) of this section empowers the Magistrate competent to receive a complaint under S. 190 of the Code of Criminal Procedure to order such an investigation, that is, investigation under