

*Before Amarjot Bhatti, J.*

**SUNIL SACHDEVA**—*Petitioner*

*versus*

**RASHMI AND ANOTHER**—*Respondents*

**CRM-M No. 5732 of 2017 (O&M)**

December 23, 2022

*Code of Criminal Procedure, 1973—S.482—Petitioner challenging grant of maintenance to wife 13 years after compromise and receipts of lump sum alimony—Cannot be held that petition under S.125 Cr.P.C. long after settlement was misuse of the process of law—In order to maintain herself and her daughter and to lead respectable life, she was compelled to file petition under S.125 Cr.P.C. claiming maintenance from husband—Therefore, maintenance petition justified—Petition dismissed.*

*Held*, that it cannot be said that Rashmi could not file petition under Section 125 Cr. P.C. after a long gap of 13 years or the filing of this petition was misuse of the process of law. Rashmi along with her two children survived on the basis of lump sum alimony given to her by her husband as well as by working as a teacher in a school. Ultimately in order to maintain herself and her daughter and to lead a respectable life, she was compelled to file petition under Section 125 Cr.P.C. claiming maintenance from Sunil Sachdeva. Therefore the petition filed by her is fully justified.

(Para 14)

Ayush Gupta, Advocate, *for the petitioner.*

R.D.Sharma, Advocate, *for the respondents.*

**AMARJOT BHATTI, J. (ORAL)**

(1) Sunil Sachdeva has filed this petition under Section 482 Cr.P.C. for quashing of judgment dated 07.12.2016 passed by learned Additional Sessions Judge, Pathankot vide which Rashmi/respondent has been granted maintenance at the rate of Rs.15,000/- per month.

(2) The brief facts of the case are that Rashmi, respondent No.1 got married with Sunil Sachdeva, petitioner on 10.09.1983 according to Hindu Rites. Out of this wedlock, they had two children; son namely Karan born on 20.7.1984 and a daughter namely Kanika

born on 26.04.1987. After marriage, due to their matrimonial dispute, Rashmi was ultimately turned out of the matrimonial home along with her two children in July, 1993. Sunil Sachdeva, the petitioner in this case, filed divorce petition against his wife, Rashmi which was dismissed. He filed appeal before the Hon'ble High Court which was also dismissed. It is alleged by Rashmi that she was employed in Army Public School, Pathankot and was getting salary of Rs.17000/- per month but she was unable to maintain herself and her daughter. She was residing in rental accommodation and huge amount was spent on electricity, water, conveyance, maintenance and other expenditure. Her daughter Kanika was a medical student and was not earning hand. She was to bear the expenditure of fee, lodging and boarding of her daughter. The expenditure was allegedly around Rs.25,000/- per month. She was forced to do the job to save themselves from starvation in the year 2000. They are living at the mercy of their relatives. They don't have any moveable or immovable property or any other source of income. On the other hand, respondent i.e. the present petitioner is well off. He is earning handsomely. He is running a shopping centre of readymade garments under the name and style of 'Kanika Shopping Centre'. He is running a hotel 'Jewel' and he is also having rental income as the premises are rented out to Allahabad Bank. Therefore, he is earning more than Rs.1 lac per month. With these facts, Rashmi and her daughter, Kanika claimed maintenance of Rs.25,000/- per month by filing application under Section 125 Cr.P.C.

(3) The application was opposed by the respondent i.e. the present petitioner, Sunil Sachdeva raising preliminary objection that Rashmi Sachdeva is employed in Army Public School, Pathankot for the last more than 10 years and she was also taking tuitions and her income is not less than 17,500/- per month. It was further alleged that as per agreement between them, they have already received Rs.3 lacs from the respondent towards past, present and future maintenance for the wife and two children. Ms.Kanika is 24 years old and completed her studies of MBBS. She is earning her livelihood. He used to pay school fee for his daughter throughout these years. He also provided fee for medical college as well as hostel fee. In fact, he is unnecessarily dragged into litigation. He also brought up his son Karan Sachdeva who passed his B.Tech and is employed as Sales Engineer in IMB, Gurgaon for the last 1-1/2 years and is earning Rs.25000/- per month. He is not paying anything to the respondent. He is giving surplus money to the applicant. He further claimed that

Kanika Shopping Centre was under the loan to the tune of Rs.25 lacs with Hindu Urban Bank, Pathankot and he has sold the same to his brother Manoj Sachdeva who has liquidated the said loan. As far as the disposal of divorce petition by the trial court and the Hon'ble High Court is concerned, it is alleged that the matter is pending before the Hon'ble Supreme Court of India. All these allegations leveled against him and his family members are false. The civil and criminal litigation has caused physical and mental agony to him and to his family members. The applicant is living in her own house. She has concealed material facts from the court. There is no hotel namely, Jewel. The respondent and his brother have transformed certain rooms of the house to earn their livelihood. There is no alleged rental income, as the premises belong to his brother and he got it vacated by filing a case. In fact, his monthly income is not more than Rs.6000/- per month. It is prayed that the application filed by the petitioner-Rashmi, may kindly be dismissed.

(4) The application filed by Rashmi and Kanika bearing No.16/22.3.2007 was declined vide judgment dated 05.02.2014, Annexure P-2. Thereafter, Rashmi and Kanika filed Criminal Revision No.5/10.03.2014 which was accepted by the court of Additional Sessions Judge Pathankot and the case was remanded back to the learned Magistrate vide judgment dated 20.12.2014 which is Annexure P-3. The learned Judicial Magistrate 1<sup>st</sup> Class, Pathankot again dismissed the application under Section 125 Cr.P.C. vide judgment dated 21.1.2015 which is Annexure P-4. Feeling aggrieved of this judgment, Rashmi and Kanika again filed Criminal revision No.12/2015 Criminal Revision No.22 of 9.5.2015 which was accepted vide judgment dated 07.12.20216 and as per this judgment, the claim of Kanika daughter of Sunil Sachdeva was declined whereas Rashmi wife of Sunil Sachdeva was granted maintenance at the rate of Rs.15000/- per month.

(5) Feeling aggrieved of this judgment, Sunil Sachdeva has filed the present case.

(6) I have heard the arguments advanced by learned counsel for the petitioner as well as counsel representing Rashmi, respondent No.1 and have gone through the record carefully.

(7) The counsel for the petitioner argued that facts of the case and the documents on record were not rightly appreciated by the learned Addl. Sessions Judge, Pathankot while passing judgment

dated 7.12.2016. The findings given by the court are contrary to the evidence and the documents produced on record. It is argued that due to matrimonial dispute, Rashmi left the house along with her two children in July 1993. The matter was settled by way of a written compromise dated 7.8.1993 vide which Sunil Sachdeva had deposited Rs.1 lac each in favour of Rashmi wife, Karan son and Kanika daughter as full and final settlement of claim regarding their past, present and future claim of maintenance along with Rs.1500 per month as rent. All the terms and conditions of compromise were put into writing and it was signed by the parties and the witnesses. The petitioner has fully complied with the said terms and conditions of the compromise and the filing of present petition under Section 125 Cr.P.C., is misuse of the process of law. Once the matter was settled between the parties, Rashmi cannot agitate the same matter by filing the petition under Section 125 Cr.P.C.

(8) Learned counsel for the revisionist secondly raised the issue that the learned Additional Sessions Judge has failed to appreciate the factual position of the case while accepting the revision petition. In fact, Rashmi is a working lady. She is serving as teacher in Army Public School, Pathankot and drawing respectable salary. The counsel for the petitioner referred to the cross-examination of Nand Lal, RW-1, Annexure P-6 where the witness admitted that in June, 2012, she was drawing the salary as Rs.20553/- and at the time of giving statement in the Court, her salary was Rs.21673/-. The learned Judicial Magistrate 1<sup>st</sup> Class while passing judgment dated 21.1.2015 rightly came to the conclusion that Rashmi cannot claim herself to be a destitute lady. She was earning salary more than her husband. Therefore, the petition filed by her under Section 125 Cr.P.C. on 22.03.2007 was not maintainable as she was employed as a teacher. This aspect of the case has been totally ignored by the learned Addl. Sessions Judge while passing the impugned judgment.

(9) The learned counsel thirdly, pointed out that he provided fee and other expenditure to his children throughout their schooling and college. Her son Karan is qualified as B.Tech. It was disclosed during the arguments that he was serving in Singapore, earning handsome salary. It is further pointed out that their daughter Kanika is a qualified doctor. She is also earning hand. Both the children are not contributing any amount towards the present petitioner. Even Rashmi is staying with her son as well as daughter. She has wrongly claimed that she has no source of income to maintain herself. In fact, she has

filed the present petition only to harass the petitioner.

(10) Lastly, the learned counsel for the petitioner pointed out that there is no convincing evidence on record to establish the income of Sunil Sachdeva to justify the order passed by the learned Additional Sessions Judge granting maintenance of Rs.15,000/- per month to Rashmi. It is pointed out that the wife Rashmi failed to lead any convincing evidence on record to establish his financial status or the fact that he was earning more than Rs.1 lac per month. He was owner of Kanika Shopping Centre of Readymade Garments which was under the burden of loan and for that reason it was sold to his brother. The petitioner denied the existence of any hotel in the name of Jewel Hotel and he further denied to have any rental income as claimed by Rashmi. It is alleged that the tenanted premises belonged to his brother and it was he who got it vacated. At the time of filing of present petition, the learned counsel for the petitioner has placed on record the Income Tax Return for the year 2012-13 in which his annual income is reflected as Rs.173126/-Annexure P-9, Income Tax Return for the year 2013-14 where his annual income is reflected as Rs.170360/- Annexure P-8 and Income Tax Return for the year 2014-15 where his annual income is reflected as Rs.207730/- Annexure P-7. Therefore, from the aforesaid documents, it is clear that the income of the present petitioner, Sunil Sachdeva is meager and he cannot afford to pay Rs.15000 per month to Rashmi as granted by the learned Addl. Sessions Judge, Pathankot by passing impugned judgment dated 07.12.2016. As Rashmi herself is earning hand therefore, she cannot claim any maintenance from the petitioner by filing petition under Section 125 Cr.P.C. It is prayed that the impugned judgment dated 7.12.2016 may kindly be set aside by accepting the present petition and the petition under Section 125 Cr.P.C. filed by Rashmi may kindly be dismissed.

(11) On the other hand, learned counsel for the respondent, Rashmi argued that she is an old lady who looked after her two children by working as teacher in Army Public School, Pathankot. She has not concealed any fact from the court. She had clearly stated in her petition under Section 125 Cr.P.C. that she was working as a teacher and her monthly income Rs.17,000/- was not sufficient to meet with the responsibilities of her two children and for herself. Therefore, she had filed the present petition under Section 125 Cr.P.C. claiming maintenance from her husband, Sunil Sachdeva. It is argued that in order to run her household affairs, she did her B.Ed after the

matrimonial dispute and took a job in the school. In the written reply submitted by her, she clarified that she was due to retire in June, 2018 after reaching the age of 58 years, as her date of birth is 9.6.1960. She will not get any pension after her retirement nor she is having a house to live in. She is living in a rented accommodation. She conceded that her son Karan is married and living with his wife in Singapore. Her daughter Kanika is preparing for M.D. She is not earning hand. The learned Additional Sessions Judge while granting maintenance to her has considered all the aspects of the present case. The petitioner wrongly claimed that he has no source of income. In fact he tried to dispose of his property to avoid payment of maintenance to his wife and children. It is argued that Sunil Sachdeva is under obligation to provide maintenance to his wife. Therefore, considering the facts of the present case, the learned Additional Sessions Judge rightly granted maintenance of Rs.15,000/- per month in favour of Rashmi. It is prayed that the petition filed by the petitioner may kindly be dismissed.

(12) I have considered the arguments advanced before me. I have gone through the record. The facts of the case are not much disputed. It is an admitted fact that Sunil Sachdeva got married with Rashmi on 10.09.1983 and out of this wedlock they had a son Karan born on 20.7.1984 and daughter Kanika, born on 26.04.1987. The matrimonial dispute started between husband and wife. As a result, they started living separate from July 1993. It is further not disputed that the matter was compromised, according to which, Sunil Sachdeva deposited Rs.1 lac each in favour of his wife and two children along with rent of Rs.1500/- per month. The written compromise dated 7.8.1993 is also placed on record. Thereafter, Rashmi and her daughter Kanika filed petition under Section 125 Cr.P.C. claiming maintenance by filing this case on 22.3.2007 which was dismissed vide judgment dated 5.2.2014, Annexure P-2. In revision, the case was remanded back vide judgment dated 20.12.2014 Annexure P-3 and the case was again dismissed by the learned Judicial Magistrate, 1<sup>st</sup> Class vide judgment dated 21.1.2015 Annexure P-4. Thereafter, Rashmi and her daughter Kanika filed revision which was accepted vide impugned judgment dated 07.12.2016. Thereafter, Sunil Sachdeva has filed the present petition seeking quashing of judgment dated 7.12.2016 passed by learned Additional Sessions Judge, Pathankot. It is further not disputed that at present, their son, Karan is married. He is B.Tech qualified and is serving in Singapore. On the other hand, Kanika daughter is also qualified doctor. Therefore, both

the children are well qualified and they are in position to maintain themselves. In this case, only Rashmi has been granted maintenance at the rate of Rs.15000/- per month to be paid by her husband Sunil Sachdeva.

(13) The matter in controversy is whether Rashmi could have filed petition under Section 125 Cr.P.C. once the matter was compromised and she along with her children had received lump sum alimony vide compromise dated 7.8.1993 or not.

(14) In this case, it cannot be ignored that vide compromise dated 7.8.1993, Rashmi and her children were given Rs.1 lac each in lump sum and they were also granted Rs.1500/- per month as rent. She filed the present petition under Section 125 Cr.P.C. for the first time on 22.3.2007 after a gap of more than 13 years. It cannot be disputed that it was not possible for a lady and her two children to survive in a meager amount of Rs.3 lacs which was given to them by Sunil Sachdeva in pursuance of aforesaid compromise. Therefore, Rashmi was justified in filing the present petition under Section 125 Cr.P.C. claiming maintenance to look after her unmarried daughter as well as for her own survival. Rashmi has not concealed any fact before the trial court. She admitted that she is working as teacher in Army Public School, Pathankot and also took private tuitions, thus, earning Rs.17500/- per month. In the written reply filed by her, she further clarified that she had done her B.Ed. after the matrimonial dispute in the year 1996 and took up a job in Army Public School, Pathankot. It is a fact that Rashmi was looking after herself along with her two children i.e. son Karan and daughter Kanika all alone. She must be getting some assistance from her own family. It cannot be ignored that it is not possible to survive in a meager salary of Rs.17000/- and to bear the responsibility of her two children who were going in professional colleges. She was to look-after their daily expenditure, food, clothing, transportation, medical expenditure as and when required and other social obligations. Therefore, on the basis of compromise dated 7.8.1983, it cannot be said that Rashmi could not file petition under Section 125 Cr.P.C. after a long gap of 13 years or the filing of this petition was misuse of the process of law. Rashmi along with her two children survived on the basis of lump sum alimony given to her by her husband as well as by working as a teacher in a school. Ultimately in order to maintain herself and her daughter and to lead a respectable life, she was compelled to file petition under Section 125 Cr.P.C. claiming maintenance from Sunil

Sachdeva. Therefore the petition filed by her is fully justified.

(15) The other important aspect of the case is financial status of Rashmi as well as Sunil Sachdeva, the present petitioner. There is nothing on record to show that Rashmi has got any moveable and immovable property. The lady survived throughout her life on the basis of teaching job done by her and she was getting salary of Rs.21673/- per month in the year 2013. The responsibility to look after her two children was on her shoulders. On the other hand, Sunil Sachdeva in the written reply claimed that his income is not more than Rs.6000/- per month. He has tried to nullify all the sources of income which Rashmi disclosed in her petition under Section 125 Cr.P.C. He claimed that he has sold the shopping centre run under the name and style of Kanika Shoping Centre of Readymade Garments to his brother as it was under a loan of Rs.25 lacs. He further claimed that they are not running any hotel in the name and style of Jewel Hotel rather he and his brother had modified two rooms of their residential house to make a source of earning and regarding the rental income, he claimed that the said premises belonged to his brother and it was he who got it vacated.

(16) Learned Additional Sessions Judge while appreciating the income of Sunil Sachdeva has considered all these facts as well as the cross examination conducted before the trial court. The matrimonial dispute was going on between the parties since July, 1993. The petitioner in order to avoid the responsibility to pay maintenance has tried to explain that he has sold his entire business to his brother. Under these circumstances, the Income Tax Returns produced by the petitioner in this case cannot be looked into for assessing his income. Rather, the aforesaid facts clearly indicate that Sunil Sachdeva is a businessman having income from different resources. It was not possible for Rashmi to bring any direct evidence to prove the income of Sunil Sachdeva. Under these circumstances, the income of Sunil Sachdeva could be assessed only by way of guess work. Rashmi at the time of filing of this petition on 22.3.2007 was mother of son who was 23 years old whereas his daughter was 20 years old. At that point, she was looking after her two grown up children. She contested for her claim under Section 125 Cr.P.C. for the last about 15 years and during this period she has retired in 2018 on attaining the age of 58 years. Therefore, at present she is about 62 years of age, already retired from her service. She needs money for her survival. During this period, the prices have increased many folds.



(17) Considering the aforesaid facts and the surrounding circumstances of the present case, I am of the opinion that the maintenance granted by the learned Additional Sessions Judge Pathankot at the rate of Rs.15,000/- per month is fully justified and it does not require any interference.

(18) With this observation, the petition is accordingly, dismissed.

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*Dr Payel Mehta*