

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

Criminal Misc. No.M-24684 of 2008 (O&M)

POONAM ...PETITIONER

VERSUS

MAHENDER KUMAR ...RESPONDENT

Criminal Misc. No.M-24684 of 2008 (O&M)

Present: Mr.P.L. Goyal, Advocate, for the petitioner.

Mr. S.D. Bansal, Advocate, for the respondent.

Marriage of Poonam (petitioner) with Mohinder Kumar (respondent) took place on 23.1.1998. Two sons were born out of the wedlock, who are residing with the respondent. The petitioner is residing with her parents. A case under Sections 406/ 498-A/ 149/ 506 of the Indian Penal Code was registered at the instance of the petitioner against the respondent and others vide F.I.R. No.52 dated 17.2.2000 at Police Station City, Jind. The petitioner filed a petition under Section 125 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') claiming maintenance from the respondent alleging that he was running wholesale business of sale and purchase of utensils in the name and style of M/s. Laxmi Metal Store and was earning Rs. 10,000/- per month. This petition was contested by the respondent on the ground that the petitioner left her matrimonial house on her own accord and that she was earning about Rs.10,000/- per month as she was M.A.B.Ed. The Judicial Magistrate 1st Class, Jind, vide order dated 9.6.2007 dismissed the petition filed by the petitioner under Section 125 of the Code. The petitioner went in revision against the order passed by the trial Magistrate. The same was also dismissed vide judgment dated 5.8.2008 passed by the Sessions Judge, Jind, although holding that the husband has not been able to prove that the wife has sufficient means to maintain herself and, at the same time, affirming the finding recorded by the trial Magistrate that the petitioner-wife left the company of the respondent on her own accord. Hence this petition under Section 482 of the Code by the petitioner seeking reversal of the orders passed by both the Courts below.

I have heard Mr.P.L. Goyal, Advocate, appearing for the petitioner and Mr. S.D. Bansal, Advocate, appearing for the respondent and have gone through the records of the case.

The trial Magistrate, after framing issues, recording evidence, both oral and documentary, and hearing the learned counsel for the parties, came to the conclusion that the petitioner has not been able to prove on record that she was ill-treated by the respondent or he was cruel towards her in any manner. Except her statement, the petitioner failed to examine any other witness in support of her case to prove ill-treatment, dowry demand and other

allegations made in the petition. Even the parents of the petitioner did not come forward to support her case. The petitioner failed to join her husband even after the petition filed by him for restitution of conjugal rights was accepted by the Court of competent jurisdiction. Petition filed under Section 13 of the Hindu Marriage Act, which was filed by the petitioner, was declined by the Court by holding that there was no desertion on the part of the respondent, rather the petitioner deserted her husband due to her own personal reasons. The petitioner did not take care of her sons, who are residing with the respondent. There is no allegation in the petition that she had ever asked the respondent for giving her the custody of the sons. The petitioner appears to be interested only in getting maintenance allowance and taking divorce from the respondent. The respondent is solely taking care of the children. To bring up two children single handedly is an onerous duty, which the respondent is performing and the petitioner is shirking. The petitioner, in her cross-examination, stated that after she left her matrimonial house, she never tried to contact the respondent or her kids. In the case of Smt.Rohtash Singh v. Ramendri (Smt.), 2000 (2) R.C.R (Criminal) 286, it was held by the Hon'ble Supreme Court that a wife is not entitled to maintenance who has deserted her husband, but a wife who has divorced on account of her desertion is entitled to maintenance from decree of divorce. Failure of the petitioner-wife to prove sufficient grounds justifying her staying away from the respondent-husband and two kids shows that she had left the society of the respondent on her own accord. In these circumstances, both the Courts below were justified in declining the petition filed by the petitioner under Section 125 of the Code.

In view of the above, the present petition is dismissed being without any merit.

March 19 , 2009.

(MOHINDER PAL)
ak JUDGE