



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

108

CRR(F)-279-2024 (O&M)

Date of decision: 11.07.2024

Satpal

..... Petitioner

Versus

Rajni and another

..... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

PRESENT: Mr. Harshit Singla, Advocate for the petitioner.

NIDHI GUPTA, J.

CRM-27394-2024

Application is allowed, as prayed for.

In compliance of the order dated 26.02.2024 passed by this Court, affidavit of the petitioner and bank account statement filed along with the application as Annexures A-1 and A-2, respectively, are taken on record, subject to all just exceptions.

CRM-8640-2024

Prayer in this application filed under Section 5 of the Limitation Act read with Section 482 Cr.P.C., is for condonation of delay of 319 days in filing the present revision petition.

Heard.

The only reason cited for condonation of such an extraordinary and inordinate delay of 319 days is that the applicant-petitioner had come to know about the passing of impugned order dated



06.01.2023 by the learned Family Court in the month of September, 2023 and immediately, he contacted his counsel who got prepared the certified copy of the order on 21.09.2023. Thereafter, the applicant fell ill and could not contact his counsel at Chandigarh for filing the revision petition. Thus, delay of 319 days in filing the accompanying revision petition had occurred. However, no documentary proof or medical reports have been attached by the applicant-petitioner, in support of the said averments.

In view of the above, the present application for condonation of delay of 319 days in filing the accompanying revision is dismissed.

CRR(F)-279-204 (On merits)

1. By way of filing the present revision petition, the petitioner-husband has assailed the order dated 06.01.2023 passed by the learned Family Court, SBS Nagar Camp Court at Balachaur, whereby in a proceeding under Section 125 Cr.P.C., the petitioner has been directed to pay final maintenance @ Rs.8,000/- per month (Rs.5000/- per month to respondent No. 1 and Rs.3000/- per month to respondent No. 2), besides an amount of Rs.5,000/- towards litigation expenses.

2. Learned counsel for the petitioner-husband submits that petitioner was married to the respondent No. 1 on 09.02.2007. One minor child/respondent No. 2 herein was born out of their wedlock, who is currently in the care and custody of respondent No. 1-wife. It is submitted that the petitioner is an Ex-servicemen and has served in the Indian Army for around 17 years. The petitioner retired in March 2018. In June, 2018 itself, respondent No. 1 deserted the petitioner without any sufficient cause and left the matrimonial home along with respondent No.

2. On 14.08.2018, the respondents filed the present petition under Section



125 Cr.P.C. (Annexure P-1), wherein vide impugned order dated 06.01.2023, the learned Family Court, directed the petitioner to pay final maintenance to the respondents, as mentioned above in the opening part of the order. Subsequently, she also falsely implicated the petitioner in an FIR No. 114 dated 06.10.2018 registered under Sections 406 and 498-A IPC at Police Station Kathgarh, Tehsil Balachaur, District SBS Nagar. In order to settle the matter amicably, a Panchayat was convened on 14.06.2019. However, respondent No. 1 had flatly refused to live with the petitioner at any cost.

3. Learned counsel submits that the impugned order deserves to be set aside, *inter alia*, on account of the fact that it is respondent No. 1 who had left the matrimonial home of her own free will and accord. As such, as per Section 125(4) Cr.P.C. she is not entitled to any maintenance.

4. Ld. Counsel refers to the bank account statement of the petitioner (Annexure A-2) for the period from 01.04.2023 to 31.03.2024 to submit that as on 31.10.2023 the petitioner is drawing pension of only about Rs.18,565/- per month. It is accordingly prayed that the present revision petition be allowed, and the impugned order dated 06.01.2023, be set aside.

5. No other argument has been raised by learned counsel for the petitioner.

6. I have heard learned counsel for the petitioner and carefully gone through the case file.

7. Before proceeding, it is pertinent to mention here that in the first paragraph of the order dated 26.02.2024 passed by this Court, inadvertently, it has been recorded that vide impugned order dated



06.01.2023 the learned Family Court had granted 'interim maintenance' of Rs.8000/- per month. It is ordered that the word 'interim maintenance' as mentioned in first paragraph of the order dated 26.02.2024 be read as **'final maintenance'**.

8. On merits, it is the case of the petitioner that the respondents are not entitled to maintenance as the respondent/wife had deserted the matrimonial home without sufficient cause. On a Court query, as to whether this ground was raised by the petitioner before the learned Family Court, counsel for the petitioner has referred to the reply dated 23.01.2019 (Annexure P-2) filed by the petitioner to the petition under Section 125 Cr.P.C. A perusal thereof shows that all that has been averred therein is that respondent No. 1 used to stay at her parental house for the entire period when the petitioner used to join his duty in different Military stations. It is the view of this Court that long stay of respondent No. 1 in her parental house in the absence of the petitioner while he was on duty, does not amount to or constitute desertion as per law. To be disentitled for maintenance, desertion has to be permanent. Whereas, as per the above averment of the petitioner, it is admitted that the respondent would come back to the matrimonial home when the petitioner would return from duty.

9. It has next been argued by the petitioner that the impugned maintenance is excessive in view of the fact that the petitioner is only drawing pension of about ₹ 18,000/- per month. However, admittedly, the petitioner failed to produce any proof in this regard before the learned Family Court. Admittedly, the bank account statement of the petitioner (Annexure A-2) was not placed on record before the learned Family Court. In fact, learned counsel for the petitioner has candidly



acknowledged that no information regarding his income assets or liabilities was provided by the petitioner before the learned Family Court.

It has thus, been recorded by the ld. Family Court as follows:

“9. However, no document has been produced on record by the petitioners to show as to how much monthly pension was being drawn by the respondent. Admittedly, petitioner no.2 is a student and attending school and no application has been moved by respondent to keep the custody of petitioner no.2. The respondent, during his cross-examination, has also admitted that since April 2019, all the expenses of petitioner no.2 were borne by the parents of petitioner no.1.

10. Neither any document has been produced by the petitioners in support of income of the respondent, nor has any document been produced by respondent in support of income of petitioner no.1.”

10. It may be pointed out that in compliance of order dated 26.02.2024 of this Court, the petitioner has filed an Affidavit dated 10.07.2024 (Annexure A-1) ostensibly depicting the income, assets and liabilities of the deponent/petitioner herein. It is stated therein that the petitioner has a Fixed Deposit of Rs.4,50,000/- for 5 years. Father of the petitioner owns land measuring 2.5 acres; FD in Senior Citizen Scheme in post office of Rs. 9 Lakhs; FD of 4.5 Lac in MIS Scheme in post office; and one gold ring of around 3-5 grams. Mother of the petitioner is also having gold earrings of around 3-4 grams. However, the said Affidavit is not in conformity with the directions/ format given by the Hon’ble Supreme Court in case of **“Rajnesh Vs. Neha and another” Criminal Appeal No.730 of 2020, Law Finder Doc ID # 1760057**. Even no reason



is given why such an affidavit as required as per *Rajnesh's case (supra)* was not filed before the learned Family Court.

11. From the above it appears that the petitioner has failed to come clean in respect of his income, assets, and liabilities. Correct information has not been disclosed either before this Court or before the learned Family Court. Since Section 125 CRPC proceedings are summary in nature, it has become a trend to not disclose correct income so that the husband is not burdened with heavy costs. Even the wife oftentimes does not disclose her income accurately in order to get a heftier maintenance. In such a scenario, the Courts have to rely on attendant circumstances in order to assess an approximation of the income and assets of the parties. It was in this background, that the learned Family Court, keeping in view the fact that the petitioner is an Ex-serviceman who has served in Indian Army for 17 years, granted final maintenance of ₹8000 per month to the respondents. Needless to say, the petitioner would have also received some retiral benefits.

12. In these circumstances, I find no ground is made out to interfere in the impugned order.

13. **Dismissed**, on merits, as well as on grounds of delay.

14. Pending application(s), if any, shall also stand disposed of.

11.07.2024
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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No