



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

215

CRR(F)-53-2018

Date of Decision: 06.11.2024

Pardeep Kumar Dalal

.... Petitioner

Versus

Reshma Kataria and another

.... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Petitioner-Pardeep Kumar Dalal in person with
Mr. Punit Malik, Advocate.

Ms. Mehak Ghangas, Advocate for
Mr. Ajay Ghangas, Advocate for the respondents.

Ms. Deepshikha Chauhan, AAG, Haryana.

NIDHI GUPTA, J.

1. Challenge in the present revision petition is to the order dated 18.12.2017 passed by the learned Principal District Judge, Family Court, Gurugram, whereby in a proceeding under Section 125 Cr.P.C., the petitioner-husband was directed to pay final maintenance @ ₹15,000/- per month to the respondents (₹5000/- per month to respondent No. 1- wife and ₹10,000/- per month to respondent No. 2-minor daughter), from the date of filing of the petition, along with a sum of ₹5500/- as one time litigation expenses.

2. It is the pleaded case of the petitioner that he has the responsibility of his old, aged and ailing mother. As such, he is unable to pay the impugned maintenance amount. It has further been pointed out on behalf of the petitioner that he is only working in Akshay Enterprises and



getting a gross salary of ₹9800/- per month. In support, of his contentions, the petitioner has appended his salary slip as Annexure P-1.

3. *Per Contra*, it is contended on behalf of the respondents that the petitioner has ancestral property; and that he is doing the business of property dealing under the name and style of 'R.K. Real Estate, Palam Vihar, Gurgaon', from which he has the income of more than ₹2,00,000/- per month; and that the petitioner is also having income of ₹1,00,000/- per month from his ancestral property.

4. It is further pointed out that the learned Family Court had discarded the evidence of the petitioner i.e. salary slip Ex. R-3 to Ex. R-5 on the ground that the petitioner had failed to produce anything on record to indicate as to what he was doing in this particular job with Akshay Enterprises. The learned Family Court further opined that this kind of salary slips Ex. R-3 to Ex. R-5 of a Private Company can be procured very easily, and were therefore, unreliable.

5. It has also come on record that the petitioner had filed a petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the HMA'), which was dismissed under Order XVII Rule 3 CPC vide order Ex. P-2, as the petitioner had failed to adduce any evidence, in support of his allegations. In the said proceedings in an application under Section 24 of the HMA, vide order dated 19.09.2014 Ex. P-1, the petitioner was directed to pay ₹10,000/- per month as maintenance *pendente lite*.

6. I have heard learned counsel for the parties and perused the case file in great detail.

7. The record indicates that the petitioner was married to respondent No. 1 on 09.12.2009. Respondent No. 2-minor daughter was



born out of their wedlock on 05.10.2010. Due to matrimonial discord, the parties are living separately since 20.04.2013. The present petition under Section 125 Cr.P.C was filed by the respondents on 01.12.2015.

8. Perusal of the order-sheets shows that when this case was listed for hearing for the first time on 02.02.2018, the petitioner was directed to place on record a copy order passed in the petition under Section 24 of the HMA assessing ₹10,000/- as interim maintenance. In compliance thereof, the petitioner had filed a copy of order dated 19.09.2014, passed by the learned District Judge, Family Court, Gurgaon, by way of application bearing No. CRM-4729-2018, which was allowed vide order dated 15.02.2018 and copy of order dated 19.09.2014 was taken on record as Annexure P-3 (at pages 6 to 9 of the said application). Notice of motion in the main revision was also ordered to be issued to the respondent by a co-ordinate Bench on the same day and the payment beyond a sum of ₹10,000/- per month was stayed.

9. A perusal of the above said order dated 19.09.2014 (Annexure P-3), would indicate that it had been pleaded therein by the petitioner that he was unemployed. However, the petitioner had admitted that the property dealing business in the name and style of '*R.K. Real Estate, Palam Vihar, Gurgaon*', was owned by his father. It had also not been denied that the family of respondent No.1 had spent about ₹22 lakhs in the marriage and had given a Scorpio vehicle, and ₹2,21,000/- in cash, besides expensive jewellery, at the time of marriage. The Family Court had accordingly correctly opined that "*It is unbelievable that such a huge amount would be spent on a marriage with an unemployed person who did not even have any family income. It appears that the applicant is*



certainly trying to conceal facts, especially as he admits that his father is a property dealer.” It was further observed that there was nothing on record to show that the wife has left the matrimonial home without any reason whatsoever. Accordingly, maintenance pendente lite of ₹10,000/- per month had been granted to the respondents.

10. It may be pointed out that on 20.08.2024 following order was passed by this Court:-

“On 21.03.2024, when this case was listed for hearing, following order was passed by this Court:-

“At the very outset, learned proxy counsel appearing on behalf of the petitioner seeks an adjournment.

On the last date of hearing i.e. 13.03.2024, following order was passed:-

“At the very outset, learned proxy counsel for the petitioner seeks short accommodation.

Learned proxy counsel for the respondents submits that the petitioner is in arrears of maintenance of over ₹5 lacs.

The petitioner is directed to be present in Court in person on the next date of hearing alongwith demand draft for a sum of ₹3 lacs towards clearance of outstanding maintenance in the name of respondent No. 1.

List on 21.03.2024.”

Today, neither the petitioner is present in person in Court nor a demand draft of ₹ 3 lacs has been presented.

Learned counsel for the petitioner seeks last opportunity to comply with order dated 13.03.2024.

Permitted.

Last opportunity is granted to petitioner.

Adjourned to 07.08.2024.”

Thereafter, on the last date of hearing i.e. 07.08.2024 following order was passed by this Court:-

“In compliance of previous order dated 21.03.2024, the petitioner is present in person in Court today and has undertaken that on the next date of hearing he shall remain present in Court along with a demand draft of ₹3,00,000/- in the name of respondent No. 1- Reshma Kataria, in terms of order dated 13.03.2024, passed by this Court.

Adjourned to 20.08.2024.”



Pursuant thereto, today also, neither the petitioner-husband is present in person in Court, nor a demand draft of ₹3 lacs in the name of respondent No.1-wife has been presented.

In view of the above, it is directed that the presence of the petitioner-husband be secured before this Court for the next date of hearing i.e. 16.09.2024 through the S.H.O. concerned. The petitioner-husband shall also bring a demand draft of ₹3 lacs in the name of respondent No. 1-wife, in terms of previous orders reproduced above.”

11. Thereafter, on the last date of hearing i.e. 16.09.2024, the petitioner was not produced before this Court by the SHO, concerned and report from the Commissioner of Police, Gurugram, was called for non-compliance of the order reproduced above.

12. In compliance thereof, Sh. Surender Singh, Assistant Commissioner of Police, City, Gurugram and Inspector Suresh Kumar, Station House Officer, Police Station Sector-14, Gurugram, have produced the petitioner in Court today. Learned counsel for the State has also filed reply/explanation dated 29.10.2024 by way of affidavit of Sh. Vikas Arora, Commissioner of Police, Gurugram, Haryana, which is taken on record.

13. On instructions, learned counsel for the State has informed that the respondents have filed an Execution Petition under the provisions of Section 125 Cr.P.C. bearing CNR NO. HRGR01-012391-2013 CIS No. CRM/612/2023 titled as 'Reshma Kataria and others vs. Pradeep Kumar', pending adjudication before the learned Principal Judge (Family Court), Gurugram, wherein also the petitioner is not appearing regularly, as a result of which conditional warrants of arrest had been issued against the petitioner for 06.07.2024 vide order dated 19.04.2024, for clearing the arrears of maintenance to the tune of ₹4,10,000/- w.e.f. 20.01.2020 to



19.07.2023 @ ₹10,000/- per month. Copy of the aforesaid conditional warrants placed on record by learned counsel for State is taken on record.

14. Learned counsel for the State further informs that aforesaid conditional warrants issued against the petitioner remained un-executed as the petitioner had sold the premises bearing H. No. 1417/3, Street No. 7, Rajiv Nagar, Gurugram. It is stated that on the next date of hearing i.e. 19.10.2024, the case was not taken up by the learned Executing Court and now the case is fixed for 26.11.2024, for appearance of the petitioner. Further, it is submitted that in compliance of previous order dated 16.09.2024 passed by this Court, the presence of petitioner has been procured before this Court from **House No. 1061, Gali No. 8, LachmanVihar, Gurgaon**. It is further informed, on instructions that the conditional warrants issued against the petitioner, have now lapsed.

15. The petitioner who is present in person has not denied the fact that he is in arrears of maintenance of over ₹5,00,000/-. Even the direction of this Court qua demand draft of ₹3,00,000/- in the name of respondent No. 1-wife towards part clearance of arrears of maintenance has not been complied with by the petitioner. The petitioner has exhibited an utterly deplorable adamant and uncooperative attitude in fulfilling his moral and legal obligations towards the respondents. However, keeping in view the pendency of the execution proceedings, this Court has refrained from directing any coercive action against the petitioner. From the facts noted here in above, it is clear that the petitioner has the paying capacity. Admittedly, petitioner is presently working as a computer operator in Akshay Enterprises. The petitioner is, therefore, well qualified, and it is not believable that as a computer operator the petitioner is getting a salary



of only about ₹9800/- per month. The petitioner is able bodied and has no physical infirmity. It is also admitted by the petitioner that the ancestral property owned by him has been sold and now, he does not possess any property. The house where he is residing is in the name of his mother. It has also come on record that father of the petitioner has expired on 19.09.2015. Therefore, the presumption is that the petitioner has inherited the property dealing business of his father. Yet, petitioner is in arrears of maintenance. Even otherwise, no ground cited by the petitioner would justify non-payment of maintenance as, it has been held by the Hon'ble Supreme Court in "**Shamima Farooqui v. Shahid Khan**" (SC): Law Finder Doc Id # 661024, as follows: –

“B. Criminal Procedure Code, 1973 Section 125 Grant of maintenance to wife - Plea of husband that he was not doing job and had no means to pay cannot be accepted - These are only bald excuses - Held :-

(i) If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife.

(ii) It is the obligation of the husband to maintain his wife - He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.”

16. It has also been contended by the petitioner before the learned Family Court, that respondent-wife is well-qualified and is, therefore, not entitled to any maintenance. The said contention of the petitioner is liable to be rejected in view of recent judgment passed by a Co-ordinate Bench of this Court in "**Divesh Sapra Vs. Latika Sapra & Another**" **CRR-F-1834-2023 and CRR-F-587-2024** decided on 15.10.2024, wherein it has been held that a professionally qualified wife cannot automatically be denied maintenance and the entire facts and circumstances of each case have to be taken into consideration at the time



of granting and determining quantum of maintenance. In the present case, admittedly, the minor child is in the custody of the respondent/wife. As such, it is incumbent upon the petitioner to at least fulfill his financial obligation towards the respondents.

17. Thus, in view of what has been discussed here-in-above and keeping in view the totality of the facts and circumstances of the case as well as the adamant conduct of the petitioner, the present revision petition is **dismissed** with costs of ₹1,00,000/- to be paid by the petitioner to the respondents in equal shares i.e. ₹50,000/- each within a period of 01 month from today.

18. Sh. Surender Singh, Assistant Commissioner of Police, City, Gurugram, is directed to produce the petitioner before the learned Executing Court on **26.11.2024**, the date already fixed whereupon, the learned Executing Court shall take strict action/initiate appropriate proceedings against the petitioner, in accordance with law, in order to recover the aforesaid costs as well as to recover the entire arrears of maintenance, under intimation to this Court.

19. A copy of this order be sent to the learned Executing Court, Gurugram, for strict compliance.

06.11.2024
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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No