

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Civil Revision No. 2567 of 2015

Date of Decision: 30.11.2015

Rajnish Kumar @ Pappi

.... Petitioner

vs.

Smt. Naresh Kumari & others

.... Respondent

**CORAM: HON'BLE MR. JUSTICE KULDIP SINGH**

**Present:** Mr. Jai Bhagwan, Advocate  
for the petitioner.  
Mr. D. K. Khanna, Advocate  
for respondent No.1.

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

**Kuldip Singh J.(Oral)**

Impugned in the revision order dated 27.02.2015 (Annexure P16), passed by learned Additional Civil Judge(Senior Division), Sunam vide which the application filed by the petitioner/husband for permission to take the voice sample of his wife, uncle Satpal and Aunt Satya Devi for the purpose of identification, was dismissed.

Briefly stated wife-respondent No.1 has filed the suit for maintenance under Section 18 of the Hindu Adoptions and

Maintenance Act, 1956 against her husband, claiming maintenance for herself and two minor children. It comes out that when the petitioner was examined, an audio conversation was put to her. She denied her voice in the said conversation and could not recognize the conversation of her uncle and aunt. It is stated on behalf of husband that it is pleaded in the written statement itself that wife tried to give poison to the husband on 11.10.1999 by mixing it in the milk.

I have heard learned counsel for the parties and have also gone through the case file carefully.

Section Hindu Adoptions and Maintenance Act, 1956.  
produce as under:-

**18. Maintenance of wife-** (1) *Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime.*

(2) *A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance,-*

*(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her;*

*(b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;*

*(c) if he is suffering from a virulent form of leprosy;*

*(d) if he has any other wife living;*

*(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine*

*elsewhere;*

*(f) if he has ceased to be a Hindu by conversion to another religion;*

*(g) if there is any other cause justifying her living separately.*

*(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.*

Section 18 of the Hindu Adoptions and Maintenance Act, 1956 provides for grant of maintenance to the wife. Under Sub-Section 2 (clause b), the wife is entitled to live separately without forfeiting her claim to maintenance, if the husband has treated her with cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband. Under Clause (a), desertion or abandoning the wife is also ground to live separately.

Learned counsel for the petitioner/husband states that he had specifically pleaded in the written statement that he wants to prove cruelty on the part of the wife and that there was no cruelty on his part on account of which she could live separately.

Learned counsel for the applicant-petitioner has argued that audio conversation was recorded by the husband himself in the presence of uncle and aunt of the wife, wherein wife has admitted to have mixed poison in the milk of the husband and now the husband

is being alleged to be treating the wife with cruelty and desertion.

The lower Court has taken a view that no original of such audio recorded conversation dated 23.11.1999 has been proved on record. The audio cassette was summoned from FAO 237-M of 2005, filed before the High Court. It was further held that no direction can be given to the relatives to give the voice samples. Any transcript has also not been placed on the file. The case is at the stage of evidence of the plaintiff. The perusal of the statement of the wife recorded before the lower Court shows that the said audio conversation has been put to the wife. So far as production and proving the original audio cassette and transcript thereof required, it can be done only during the evidence of the defendant. Further the Court is not powerless to summon any witness at the instance of the defendants to prove certain facts. The merits of the case cannot be determined at this stage. The husband can always prove that wife is living separately without sufficient cause and for her own fault. The said evidence is sought to be proved only against the wife.

It being so, the impugned order is set aside. The defendant is allowed to summon and produce the original audio cassette, file the transcript thereof and then ask the wife to give the voice samples before the Court for the purpose of comparison. He shall also be entitled to summon uncle Satpal and aunt Satya Devi for giving voice samples. This will be done only during the evidence

of the defendants. However, it will always be at the option of the wife and the said witnesses whether they are willing to give the sample or not.

The revision is accordingly allowed.

**30.11.2015**

*gk*

**(Kuldip Singh)  
Judge**