

In the High Court of Punjab and Haryana at Chandigarh

CRM-M-21414 of 2012

Date of Decision:21.2.2015

Manju Aggarwal and another

---Petitioners

versus

Dharminder Kumar Jain

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Manju Aggarwal, petitioner in person

None for the respondent

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

REKHA MITTAL, J.

The present petition under Section 482 of the Code of Criminal Procedure has been preferred for modification of the order dated 5.6.2012 passed by the Additional Sessions Judge, Ludhiana by enhancement of maintenance awarded to the petitioners.

The facts relevant for disposal of the present petition are that Manju Aggarwal, petitioner No. 1 was married with the respondent on 6.2.1998 at Sangrur (Punjab) according to Hindu rites and ceremonies. Out of their wedlock, Harshita minor (petitioner No. 2) was born on 6.12.1998. Due to marital disharmony between the couple on account of

alleged harassment and cruelty meted out to petitioner No. 1 at the behest of her husband and his family owing to demand of dowry, petitioner No. 1 alongwith minor child has been staying with her brother at Ludhiana. The petitioners filed an application under Sections 125 Cr.P.C. for grant of maintenance which was allowed by the Judicial Magistrate Ist Class, Kandaghat camp at Solan (H.P.) and the petitioners were awarded maintenance at the rate of Rs. 4000/- per month from the date of application i.e. 15.5.2006. Being dissatisfied with the amount of maintenance assessed by the trial court, the petitioners preferred the revision petition. With the intervention of Hon'ble the Supreme Court of India, the proceedings pending in the Court at Solan were transferred to the Court at Ludhiana and this is how the Additional Sessions Judge, Ludhiana came to be seized of the matter. The revisional court partly allowed the petition and maintenance assessed by the trial court was enhanced to the extent that petitioner No. 1 was held entitled to maintenance at the rate of Rs. 3500/- per month and Rs. 3000/- per month payable to the minor petitioner. Still feeling dissatisfied, the present petition has been filed seeking enhancement of maintenance.

Manju Aggarwal, petitioner in person, would contend that her husband Dharmendra Kumar Jain, respondent is a diploma holder in civil engineering and is a Class-A contractor. He has no other obligation to discharge except to pay maintenance to the petitioners. The minor daughter of the parties is a student of Class 10th in a reputed convent school at Ludhiana and maintenance awarded by the Courts below is not at all sufficient to meet their daily needs and expenses on education of the child.

It is further argued that in the year 2006, the respondent was awarded two contracts Mark 'B' and 'C' of value of more than Rs. 30 lakhs by Dr. Y.S.Parmar, University of Horticulture and Forestry, Nauni (Solan) and these construction contracts were allowed at 28.50% and 28.62% above the estimated cost respectively. It is argued that keeping in view percentage allowed above the estimated cost, income of the respondent from these two works scheduled to be executed within a period of 12 months cannot be estimated less than Rs. 4-5 lakhs. It is argued that in view of vocation and income of the respondent and needs of the petitioners especially the daughter of the parties, maintenance assessed by the Courts below is liable to be enhanced. The maintenance assessed by the Courts is inadequate and the petitioners cannot be allowed to starve for want of funds which should commensurate to income of the respondent.

The respondent was earlier being represented by a counsel but there is no representation on his behalf for the last many dates. As a result, there is no counter to the submissions made by the petitioner.

I have heard the petitioner and perused the records.

The only question that arises for adjudication is whether the maintenance assessed by the revisional court is liable to be enhanced.

Before advertng to the factual controversy, it is appropriate to note that the wife is entitled to same amenities of life as she would have had she been staying with her husband. Unfortunately, the couple could not reconcile their differences and resultantly the daughter born out of the wedlock has been constrained to reside with one parent and in this case she is staying with her mother. Indisputably, the child is getting education from

one of the best educational institution at Ludhiana and the petitioner has produced some documents in regard to her tuition fee and other charges paid to the school.

To answer the aforesaid question, the crucial issue to be decided is what is income of the respondent. There is no clear cut evidence on record with regard to income of the respondent. Nevertheless, it is pertinent to mention that the respondent exhibited one of his income tax returns filed for the year 2005-06 wherein he reflected his income to the tune of Rs. 57,120/- per annum. As litigation between the parties had already commenced by the time the husband filed the income tax return, possibility cannot be ruled out that he showed lesser income to escape his liability to pay adequate maintenance to his wife and child.

It has been proved on record that the respondent was awarded two contracts of construction of parking place and upgradation of water supply facilities by Dr. Y.S.Parmar, University of Horticulture and Forestry, Nauni (Solan) in the year 2006, Mark 'B' and 'C'. The total value of these contracts is around Rs. 30 lakhs which is about 28.5 or 6 % above the estimated cost. Keeping in view the total value of the contracts coupled with the administrative expenses likely to be incurred by the respondent in maintaining his office etc., in my considered opinion, income of the respondent can be assessed at Rs. 03 lacs per annum and his average monthly income comes to Rs. 25000/-.

The respondent has an obligation to provide adequate maintenance to his wife and child. Maintenance includes money for meeting needs of food, clothing, housing, education, entertainment etc. if

not luxuries. Taking into consideration facts and circumstances obtaining in the present case, it is expedient in the interest of justice that the petitioners are allowed maintenance at the rate of Rs. 5000/- per month each from the date of application.

In view of what has been discussed hereinabove, the petition is partly allowed in the terms indicated above.

(REKHA MITTAL)
JUDGE

21.2.2015
PARAMJIT