

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

**Criminal Misc. No. M-19921 of 2015
Date of Decision:-07.9.2015**

Manoj Kumar

...Petitioner

Versus

Bindu Sharma

...Respondent

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. *Whether reporters of local newspapers may be allowed to see judgment?*
2. *To be referred to reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present:- Mr. J.P. Sharma, Advocate
for the petitioner.

HARI PAL VERMA J.(Oral)

Petitioner-Manoj Kumar son of Mahesh Kumar Sharma, resident of Village Jilo Patan, Police Station Sikar, District Sikar, Rajasthan has filed the present petition for quashing of judgment dated 16.1.2015 (Annexure P-1) passed by learned Sessions Judge, Narnaul, whereby revision petition against the order dated 31.7.2012 (Annexure P-2) passed by learned Additional Chief Judicial Magistrate, Narnaul, filed by the respondent was accepted.

Learned Sessions Judge vide order dated 16.1.2015 has granted maintenance allowance to the respondent @ Rs.5000/- per month, whereas learned Magistrate vide order dated 31.7.2012 had

granted maintenance @ Rs.3000/- per month under Section 125 Cr.P.C. from the date of filing of the petition.

Briefly stated marriage between the parties was solemnized on 17.4.2003. Father of the respondent-wife had given sufficient dowry more than his capacity. After marriage, the family of the petitioner started harassing the respondent-wife for bringing insufficient dowry. It is alleged that the petitioner pressurised and threatened the respondent to bring more dowry. She was pressurized to bring Rs.2 lacs from her parental home and in order to fulfil their demands, father of the respondent-wife had given Rs.50,000/- to the petitioner but the family of the petitioner demanded Rs.1,50,000/- more and because of non-fulfilment of their demand, she was turned out of her matrimonial home. After that the respondent-wife used to live in her parental home. She has no source of income. The petitioner is stated to have running a private coaching center in the name of 'Shiv Shakti Coaching Center', Bihar and a private school in the name of 'Saroj Public School' and is earning Rs.15,000/- per month and also an able bodied person and can easily pay the said amount to the respondent-wife for maintenance.

Learned trial Court vide judgment dated 31.7.2012 has allowed the application filed by the respondent-wife and awarded maintenance @ Rs.3000/- per month to be paid by the petitioner-husband to the respondent-wife. The relevant para of the judgment read as under :-

“9. After hearing the contention of learned counsel for the parties, I am of the considered opinion that the obligation of the husband to maintain his wife stems out

of the obligation cast under personal law and it does not matter at all as to whether the wife has any potential to earn anything, if she is not actually earning anything. The respondent is duty bound to maintain his wife even if she is living separately, one she has cogent reason to be remained away. In this regard reference can also be made to the case law reported as **H.C. Mohan versus Smt. Sulochana 2001(2) JR 695**. In case **Sudha alias Ranjana versus Rajkumar Deoganda Patil, 1997(4) RCR 419**, it was held by Hon'ble Bombay High Court that even though, the husband is blind, his entering into marriage with the petitioner is itself indication that he has undertaken to maintain the petitioner. Section 125 Cr.P.C. speaks of the inability of the wife to maintain herself and does not speak about the physical capacity of earning capacity of the husband to maintain himself or his wife.

10. From the above, it is clear that respondent cannot escape his liability to maintain his wife i.e. petitioner in any circumstances. Therefore, keeping in view the circumstances of the case, Rs.3000/- per month is allowed as maintenance to the petitioner, to be paid to the petitioner by the respondent from the date of filing of this petition. It is ordered accordingly. Petition stands allowed. If any amount was paid by the respondent, the same would be set-up. File be consigned to the record room after due compliance.”

Since the respondent-wife has claimed maintenance @ Rs.5000/- per month, but the learned Magistrate has awarded maintenance @ Rs.3000/- per month, the respondent-wife challenged the judgment dated 31.7.2012. Learned Sessions Judge, Narnaul vide judgment dated 16.1.2015 has modified the judgment dated 31.7.2012

passed by learned Magistrate and held that the respondent-wife is entitled to claim maintenance @ Rs.5000/- per month from the date of petition. The aforesaid judgment passed by learned Sessions Judge dated 16.1.2015 and the order dated 31.7.2012 passed by learned Additional Chief Judicial Magistrate, Narnaul are the subject matter of challenge before this Court by way of present revision petition.

Learned counsel for the petitioner contends that there was no material before the trial Court or even before the revisionary Court to come to the conclusion that income of the petitioner is Rs.15,000/- per month. The petitioner is neither running a school as alleged nor running any coaching center. The allegations are fabricated and without any evidence. He further states that it is for the respondent-wife to prove by way of admissible evidence regarding income of the petitioner-husband and in the absence of any such material, the maintenance granted to the respondent-wife is not sustainable. He further submits that the parties have already been granted a decree of divorce.

I have heard learned counsel for the petitioner and perused the case file carefully.

As held in the case of **Shail Kumar Devi vs. Krishan Bhagwan Pathak @ Krishan B. Pathak 2008(3) RCR (Criminal) 842** maintenance is a right which accrues to a wife against her husband, the minute the former gets married to later. It is not only a moral obligation, but is also a legal duty cast upon the husband to maintain his wife. In the present case, the marriage between the parties is not disputed. It has also come on record that the petitioner was running a school in the name of 'Saroj Public School' and also running a coaching center in the name of

'Shivshakti Coaching Center' and is earning Rs.15,000/- per month. There is no rebuttal to the evidence so led by the respondent-wife.

Thus, taking into consideration the factum of running of school and a coaching center by the petitioner, this Court finds that the amount of maintenance awarded to the respondent-wife is certainly not on higher side. Nothing has come on record that after divorce, the respondent has got re-married. In this manner, presently the respondent is certainly living at the mercy of her parents and, therefore, she is entitled to claim maintenance at least 1/3rd income of the husband in the present scenario, when the price of commodities are all times high.

In this manner, the learned Sessions Judge, Narnaul, while accepting the revision petition, filed by the petitioner-husband has rightly concluded and modified the judgment dated 31.7.2012 of the learned Additional Chief Judicial Magistrate, Narnaul and has awarded maintenance allowance @ Rs.5000/- per month as claimed by the respondent-wife. Therefore, I find no illegality in the order passed by learned Sessions Judge, Narnaul. Accordingly, the present petition is dismissed.

September 07, 2015
Vijay Asija

(**HARI PAL VERMA**)
JUDGE