

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

**Crl. Misc. No. M-27322 of 2013 (O&M)
Date of decision : 26.11.2015**

Smt. Mukesh and another

..... Petitioners

versus

Naveen Kumar

... Respondent

with

Crl. Misc. No. M-31584 of 2013 (O&M)

Naveen Kumar

..... Petitioners

versus

Smt. Mukesh & another

... Respondents

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? No

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Vikas Sharma, Advocate
for petitioners in CRM-M-27322-2013 &
for respondents in CRM-M-31584-2013.

Mr. Sushil Jain, Advocate
for the petitioner in CRM-M-31584-2013 &
for the respondent in CRM-M-27322-2013.

ANITA CHAUDHRY, J.

1. Two separate petitions have been filed, one by the wife and the other by the husband laying challenge to the order dated 15.06.2013, passed by the Sessions Judge, Jind, vide which the order passed by the Additional Chief Judicial Magistrate, Jind was modified. The wife in her petition bearing No.CRM-M-27322-2013 seeks enhancement of the maintenance awarded to her and her daughter.

2. Brief facts giving the backdrop are necessary. Mukesh and Naveen were married in November 2000. A child was born to them in August, 2001. The wife filed a petition under Section 125 Cr.P.C. in 2003. An order for interim maintenance was passed vide which Rs.800/- per month was allowed to the wife and Rs.600/- per month was allowed to the child. The matter was taken up before the Lok Adalat on 02.09.2006 and the parties agreed on the maintenance amount that was allowed by way of the interim arrangement in 2006.

3. Thereafter, a petition under Section 127 Cr.P.C. was filed for alteration in the maintenance in December, 2009 pleading that circumstances had changed and the husband was a Lecturer in Government College at Kaithal and had sufficient means and was getting salary of Rs.50,000/- per month. The prices had risen and she was entitled to Rs.10,000/- per month for herself and Rs.8,000/- per month as maintenance for the child. The husband in his reply denied the allegations but in

the reply filed in August, 2010 pleaded that he was in temporary employment and was getting salary of Rs.25,000/- per month and he was residing in a rented house in Kaithal and had to pay rent. He was also contributing some amount for his aged parents besides bearing the expenses on the customary rituals of his four married sisters.

4. The wife examined herself and produced receipts Ex.P1 to P4 showing deposits that the amount spent on her own education. Ex.P5 was the receipt to show the admission fees & tuition fees of the child paid for the year 2010-2011. A receipt Ex.P8 was introduced in evidence to show that wife had deposited Rs.10,000/- as second installment for her B.Ed. Course. The petitioner produced information received under the R.T.I. Act to show that the basic pay of her husband on 01.04.2011 was Rs.24,320/- per month and the gross salary paid in April, 2011 was Rs.39,655/-. The wife had also obtained information under the R.T.I. Act with respect to the pension received by Chatar Singh, her father-in-law to show that a sum of Rs.10,000/- was received as pension. Ex. P13 was the fees paid for the child for the academic session 2011-2012, which was to the tune of Rs.21,200/- for the whole year.

5. The respondent-husband in his affidavit had stated that he had filed a divorce petition which was accepted in 2006 and he was treated with cruelty and she had withdrawn from the society of the respondent without any reasonable excuse

and she was the one who had deserted him and she was not interested in staying with her. He pleaded that a case under Section 323/406/498A IPC was got registered against him and his parents which ended in their acquittal in 2009. It was pleaded that wife had filed a false complaint under the Domestic Violence Act and that too was dismissed in 2009. It was pleaded that wife was working as a Nurse in Jangra Hospital, Julana and was getting salary of Rs.10,000/- per month. He had pleaded that he was ready and willing to take the child in his custody and maintain her. It was pleaded that he had taken a house on rent @ Rs.8,000/- per month and EPF of Rs.5,729/- was being compulsorily deducted from his salary besides the income-tax. It was pleaded that he was getting Rs.29,936/- per month as take home salary and he was in temporary employment. The respondent had tendered in evidence the judgment vide which he had been acquitted and the judgment passed in the proceedings instituted under the Domestic Violence Act.

6. The trial Court vide its order dated 08.10.2012 considering all the aspects, enhanced the compensation from Rs.1,400/- to Rs.3,500/- per month i.e. Rs.1500/- for petitioner no.1 and Rs.2000/- for petitioner no.2 from the date of order.

7. Aggrieved with the order, the wife filed a revision before the Sessions Judge, Jind who vide its order dated 15.06.2013 enhanced the compensation to Rs.6,500/- per

month for both the petitioners but from the date of institution of the petition i.e. 15.12.2009. The concluding paragraph reads as under:-

"After giving my thoughtful consideration to the submissions so made by both the sides, I am of the considered view that the revision petition is liable to be partly allowed by enhancing maintenance from Rs.3500/- to Rs.6500/- per month, because as per letter Ex.P9 of the State Public Information in the office of Higher Education, Haryana, Panchkula, the gross salary of the respondent for the month of April, 2011 was Rs.39,655/- and thereafter, some increase in his pay must have occurred. It is also evident from the oral as well as documentary evidence available on trial Court record that the revisionist no.2 was studying in 6th standard during the academic sessions 2011-2012 and her mother revisionist no.1 was bearing all her expenses. Furthermore, in these days of hardship, it is very difficult for a deserted women and her minor child to cope with the daily necessities of life without sufficient earning. In the instant case, there is no evidence worth the name led by the respondent that his wife revisionist no.1 is an

earning hand. Keeping in view the facts and circumstances as well as the status of the parties, maintenance to the tune of Rs.3500/- per month is not sufficient for the revisionists to meet their daily requirements even while living a simple life. Hence, modifying the impugned order of the learned trial Court, the enhanced maintenance is further enhanced from Rs.3500/- to Rs.6500/- per month. However, it would be in the interest of justice and the minor revisionist, if it ordered that out of the enhanced amount of Rs.6500/-, a sum of Rs.3000/- per month shall be deposited in her name in any nationalized bank or post office getting maximum interest which she shall be entitled to encash on becoming major.

As a sequel to discussion above, the revision petition is partly accepted. The impugned order of the learned trial Court is modified to the extent that the maintenance enhanced by it is further enhanced from Rs.3500/- to Rs.6500/- per month and it shall be payable by the respondent from the date of institution of the petition i.e. 15.12.2009. It is further ordered that out of the enhanced amount of Rs.6500/-, a sum of Rs.3000/- shall

be deposited in fixed deposit scheme in the name of minor revisionist no.2 Diksha in any nationalized bank or post office getting maximum interest and she shall be entitled to withdraw the same on attaining the age of her majority. Trial Court record be sent back with a copy of the judgment. File of the revision petition be consigned to the record room after due compliance."

8. I have heard counsels for both the sides.
9. The submission made on behalf of the wife was that the Sessions Judge, Jind had modified the order but they were entitled to higher amount of maintenance considering the rising prices and cost of education. It was urged that the husband had admitted that he was getting a salary of Rs.25,000/- per month and the wife was entitled to the same status as the husband.
10. The submission on behalf of the husband was that differences arose and the wife left the husband within three years of the marriage, the wife had approached the Court for maintenance. It was urged that a compromise was effected before the Lok Adalat and a divorce petition was filed by the husband which was allowed. It was urged that the wife dragged the husband in litigations and had got the FIR lodged against him and his parents, which ended in acquittal. It was urged

that the petition had been filed in 2009 and the evidence which had come on record related to the year 2010-11 and the Sessions Judge, Jind has awarded maintenance from the date of institution of the petition which is December, 2009 and there was no evidence that the salary in that year was Rs.39,000/- per month. It was urged that in paragraph no. 7 of the judgment the revisional Court has specifically mentioned the salary which the husband was getting in April, 2011 to be Rs.39,655/- per month and adding an increase, it wrongly assumed the income to be much higher and the maintenance could not have been awarded from the date of institution of the petition and no reasons have been reflected in the order. It was urged that the trial Court had also awarded Rs.3,500/- per month from the date of order and the Sessions Judge, Jind was not justified in raising the amount and awarding the same from the date of institution of the petition. It was urged that the wife was highly educated and he was not expected to pay for her Masters and B.Ed. Degrees and she was employed and it was another matter that they could not lay hands on the documents.

11. The submission on behalf of the wife was that the amount which had been awarded was on the lower side as compared to the rise in the price index and the goods getting more expensive. It was urged that the Sessions Judge had ignored the fact that the husband was getting salary of

Rs.39,655/- per month whereas they had been allowed Rs.6,500/- per month.

12. The parties were married in November, 2000. The child was born in August, 2001. The parties separated towards the end of 2003. Proceedings for maintenance were initiated and compromise was effected before the Lok Adalat and Rs.800/- per month was allowed to the wife and Rs.600/- per month for child in 2006. The petition under Section 127 Cr.P.C. seeking alteration/modification in the maintenance was filed in December, 2009. It was allowed by the Additional Chief Judicial Magistrate, Jind in October, 2012, raising the maintenance to Rs.1,500/- per month to the wife and Rs.2,000/- per month for the child making a total of Rs.3,500/- from the date of passing of the order.

13. The wife carried a revision before the Sessions Judge, Jind who enhanced the maintenance to Rs.6,500/- per month from the date of filing of the petition i.e. 15.12.2009. The observations made by the Sessions Judge, Jind have been reproduced above, will show that the revisional Court considered the income of the husband which the husband was getting in April, 2011 to modify the maintenance. It erred while allowing that maintenance from the date of petition. If the enhancement was to be given from the date of the petition then it should have considered the income of 2009.

14. The facts also reveal that the parties have separated after two years of their marriage. The wife is pursuing her studies and improving her educational qualifications. She had got her Master's degree and also completed her B.Ed some time in 2011-2012. The bills appended by the petitioner-wife pertain to the expenses made by her for her own education. Ex. P1 to P9 are the amounts paid to various educational institutions from time to time. The only bill for payment of school fees of the daughter are Ex.P5 & Ex.P13, which shows that approximately Rs.1,800/- to Rs.1,900/- per month is being paid as school fees.

15. The husband had filed a divorce petition and a divorce decree had been passed. Subsequently, an appeal was carried and the husband was restrained from marrying for second time. The wife had initiated proceedings under Section 498-A IPC, which ended in acquittal. She also filed proceedings under the Domestic Violence Act, which too were dismissed. The orders are available on the lower Court record.

16. Section 125(2) Cr.P.C. provides that the allowance which may be granted to the wife and child shall be payable from the date of order, or, if so ordered, from the date of application for maintenance.

17. The Trial Court allowed maintenance from the date of order. The revisional Court modified the same and enhanced the amount and awarded the enhanced amount from the date

of application but at the same time it considered the income he (husband) was getting in 2011 which could not have been done.

18. The counsel for the petitioner-wife had relied upon the law laid down by Hon'ble Supreme Court in ***Sau Suman Narayan Niphade and another Vs. Narayan Sitaram Niphade and another 1996 SCC (Cri) 53*** and sought support but the facts of that case are entirely different. It was a case where the husband had incurred liability to pay installments by obtaining loans and it was held that there was no reason why the wife and the child should be denied maintenance just because the husband had incurred liability.

19. The trial Court had thoroughly examined the evidence and had allowed an increase to the petitioners but the petitioners were aggrieved and have preferred a revision. The revisional Court wrongly assumed the salary and allowed increase in the maintenance. The Court had no material before it with respect to the salary which the husband was getting in 2009. The income earned in April, 2011 was considered which it could not have, when it was allowing the maintenance from the date of filing of the petition. The Sessions Judge was swayed with the fact that if the income in April, 2011 was Rs.39,655/-, there would have been some further increase in the pay.

20. The only document produced on record by the wife with respect to the education of the child was a single receipt

Ex.P-13 which shows that the wife is not spending more than Rs.1800 – 1900/- per month on the school fees. Of course there would be other expenses as well. The increase could not have been given from the date of application, therefore, the order needs to be modified. No increase can be allowed to the wife. She improved her educational qualifications and would certainly be earning for herself but she has kept that material away from the Court. The husband could not lay hands on that material. No further increase can be allowed. Therefore, the petition filed by the wife namely Smt. Mukesh is dismissed. The order passed by the Sessions Judge is modified to the extent that the increased amount allowed by him shall be payable from the date of order passed by the first Court i.e. 08.10.2012. The petition filed by the husband is, therefore, partly allowed.

**(ANITA CHAUDHRY)
JUDGE**

26.11.2015
Sunil