

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

**CRM No.M-28865 of 2012
Date of decision : 30.07.2015**

Jasbir Kaur

..... Petitioner

versus

Gurdev Singh

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Satbir Rathore, Advocate
for the petitioner.

None for the respondent.

ANITA CHAUDHRY, J.

This is a petition for quashing the order dated 18.08.2012, passed by Sessions Judge, Hoshiarpur, setting aside the order passed by the trial Court.

The backdrop of the case is necessary. The petitioner had filed a petition under Section 125 of Cr.P.C. The S.D.J.M., Dasuya vide its order dated 01.05.2012 allowed Rs.2500/- per month as interim maintenance during the pendency of the main petition holding that even if the respondent was doing labour work, he must be earning Rs.6,000/- per month.

The husband assailed the order and the Sessions Judge, Hoshiarpur, vide impugned order held the findings to be illegal. The observations made in Para No.7 are as follows:-

"Learned trial court held as if earnings of revision petitioner by doing labour works is Rs.6000/- per month approximately, due to which he possesses capacity of pay Rs.2500/- per month as ad-interim maintenance. There is no material produced on the record to show that revision petitioner owns any agricultural land and as such, income of revision petitioner to be taken at par with that of a labourer. A labourer on daily wage basis can earn at the most Rs.3500/- or Rs.4000/- per month, if he gets work on all the days. It is also because earnings of unskilled labourers fixed as per D.C. Rates is Rs.133/- or Rs.134/- per day. Therefore, learned trial Court committed error and illegality in finding as if earning of revision petitioner is Rs.6,000/- per month. Even learned trial court committed an error and illegality in not taking into consideration the amount of Rs.4,50,000/- available with respondent. So, the order of the trial Court awarding interim maintenance allowance amount @ Rs.2500/- per month suffers from illegality patent on the record and as such, the impugned order deserves to be set aside. After considering the entire material on record, learned trial court should pass fresh order after hearing the parties."

Thereafter, the Sessions Judge, Hoshiarpur accepted the revision and remitted the matter back to the trial Court for fresh decision on the application.

The wife had filed this petition assailing the order vide which the matter had been remitted to the Court.

Notice was given to the respondent and his counsel had appeared. On 22.03.2013, the husband was directed to pay interim maintenance of Rs.1500/- per month from the date of filing of the application which was subject to adjustment and case was adjourned for further proceedings. No payment was made and the respondent side did not appear after 25th November, 2014 and the case was adjourned to enable the respondent to join the proceedings but they have failed to do so.

On the last hearing, the petitioner was asked to inform whether the main petition was pending or had been decided. It is stated that the petition is pending.

The counsel for the petitioner urges that the matter could not have been remitted and if the Sessions Judge felt that a different amount was payable then he could have passed an order on his own and should not have remanded the matter back to the court for a decision afresh as there was no material which was to be considered.

At the stage of granting interim maintenance, unless the parties produce evidence with respect to the income earned by the parties, the Court is expected to grant interim maintenance for the sustenance of the wife or child as the case may be and if there is no material there, it can assess the ability taking into account his education and the work he can do. The Magistrate had taken a view that as a labourer in 2012 could earn Rs.6000/- per month it had allowed Rs.2500/- per month as interim maintenance to the wife.

The Sessions Judge had observed in the impugned order that a labourer could only earn Rs.3500/- to Rs.4000/- in a month. In that case, he should have decided the matter. The case should not have been remitted for fresh decision. The petitioner has been deprived of maintenance for the last three years. The respondent has failed to pay even a single penny despite there being an order. Later he stopped appearing in this Court.

The order passed by the Sessions Judge is set aside. The matter is remitted back to the Sessions Judge, Hoshiarpur who would decide the matter afresh at the earliest. Parties are directed to appear before the Sessions Judge on 10.08.2015.

(ANITA CHAUDHRY)
JUDGE

30.07.2015

'Sunil'