IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc. No. M-27243 of 2015
Date of decision: 17.08.2015

Dilbar Jeet Singh Sahota ..Petitioner

Versus

Rajwant Kaur Sahota ..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

Present: Mr. Ramesh Chand Sharma, Advocate
for the petitioner.

Daya Chaudhary, J.

The present petition has been filed under Section 482 Cr.P.C. for quashing of order dated 21.04.2015 passed by learned Additional Sessions Judge, Jalandhar as well as order dated 07.08.2014 passed by the Judicial Magistrate Ist Class, Jalandhar, whereby, the respondent-wife has been awarded an amount of ₹2500/- per month as interim maintenance along with ₹5000/- as litigation expenses.

Briefly, the facts of the case are that respondent-wife-Rajwant Kaur Sahota filed a criminal complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 against the petitioner-husband before Judicial Magistrate Ist Class, Jalandhar. In the aforesaid complaint, she prayed for grant of interim maintenance under Section 125 Cr.P.C., which was allowed vide order

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dated 07.08.2014.

Aggrieved by said order, the petitioner filed revision petition before learned Additional Sessions Judge, Jalandhar, which was dismissed on 21.04.2015.

Both the orders passed by Judicial Magistrate Ist Class, Jalandhar as well as Additional Sessions Judge, Jalandhar are subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that both the Courts below have not taken into consideration the fact that the petitioner is suffering from Bipolar Affective Disorder and he is not in a position to earn anything. By considering income of the petitioner as ₹6000/- per month, interim maintenance has been granted to the respondent-wife, which is on the excessive side. Learned counsel also submits that along with interim maintenance, an amount of ₹5000/- has also been awarded as litigation expenses.

Heard arguments of learned counsel for the petitioner and have also perused the orders passed by both the Courts below.

Both the orders have been challenged on the ground that the petitioner is not earning anything and without taking into consideration this fact, the maintenance on the excessive side has been awarded.

It has specifically been mentioned in the order passed by Judicial Magistrate Ist Class, Jalandhar that a copy of *jamabandi* showing the land was also placed on record by the complainant and

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by considering the minimum earning, the amount of maintenance has been awarded, which is only ₹2500/- per month. No document whatsoever regarding ailment of the petitioner was placed on record before both the Courts below. Moreover, even without earning anything, the husband is legally bound to maintain his legally wedded wife as has been held in various judgments.

Even while advancing arguments before this Court, no document has been shown by learned counsel for the petitioner regarding mental ailment of the petitioner. Simply by stating that the petitioner is not in a position to earn anything and he himself is dependent upon his father, is not sufficient. The father of the petitioner is having land and the petitioner being son has a right on the land and it cannot be said that the petitioner is dependent upon his father. Even without having any independent source of income, the petitioner is duty bound to protect his wife.

In ***Shamima Farooqui vs. Shahid Khan, 2015(2) RCR (Criminal) 526***, it has been held by Hon'ble the Supreme Court that plea of husband that he is not doing job and has no means to pay, cannot be accepted to deny the maintenance as these are only bald excuses. The husband is healthy, able bodied and is in a position to support himself. He is under legal obligation to support his wife as well. Hon'ble the Supreme Court has gone to the extent in saying that it is the obligation of the husband to maintain his wife and he cannot be permitted to plead that he is unable to maintain the wife due to

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financial constraints as long as he is capable of earning. In this context, a passage is quoted from the judgment of case in ***Chander Prakash Bodhraj vs. Shila Rani Chander Prakash, AIR 1968 Delhi 174***, wherein it has been held as under: -

> *"An able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodies person to show to the Court cogent grounds for holding that he is unable to reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him."*

A three-Judge Bench of Hon'ble the Supreme Court in ***Vimla (K.) vs. Veeraswamy (K.), 1991(3) RCR (Criminal) 639,*** while discussing about the basic purpose under Section 125 of the Code, opined that Section 125 of the Code is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the

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deserted wife.

A two-Judge Bench of Hon'ble the Supreme Court in ***Kirtikant D. Vadodaria vs. State of Gujarat and another, 1996(3) RCR (Criminal) 147,*** while adverting to the dominant purpose behind Section 125 of the Code, ruled that:

> *"While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation."*

Hon'ble the Supreme Court in ***Chaturbhuj vs. Sita Bai, 2008(1) RCR (Criminal) 163***, while reiterating the legal position, held

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as under: -

> *"Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in* ***Captain Ramesh Chander Kaushal vs. Veena Kaushal, (1978) 4 SCC 70*** *falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in* ***Savitaben Somabhai Bhatiya vs. State of Gujarat, 2005(2) RCR (Criminal) 190****."*

Otherwise also, there is limited scope to interfere in cases of interim maintenance. Hence, there is no merit in the contentions raised by learned counsel for the petitioner and the present petition being devoid of any merit is hereby dismissed.

17.08.2015 **(DAYA CHAUDHARY)**
neetu **JUDGE**

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