

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

**Crl. Misc. No.M-31563 of 2014
Date of decision : 24.07.2015**

Deepak Cardial

.....Petitioner(s)

Versus

Pinky Yadav and another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sudhir Aggarwal, Advocate
for the petitioner.

Mrs. Pratibha Yadav, Advocate
for respondents no.1 & 2.

ANITA CHAUDHRY, J(ORAL)

1. This petition has been filed under Section 482 Cr.P.C. for quashing the order dated 07.08.2014, passed by the Sessions Judge, Rewari who modified the order dated 03.01.2014, passed by CJM, Rewari and enhanced the maintenance.

2. The backdrop of the case is necessary which led to the filing of the present petition. The petitioner and respondent no.1 were married in 2007. Two children were born, a son and a daughter in 2010 and 2011. The wife filed a petition seeking maintenance. It was pleaded that the husband had deserted her after the birth of the second child. The husband was stated to be working in a private firm and was earning Rs.50,000/- per month. The husband pleaded that

material facts had been concealed from the Court and the wife was a practising lawyer in the district Courts at Rewari and was earning Rs.25,000/- per month.

3. While allowing interim maintenance, the Chief Judicial Magistrate, Rewari vide order dated 03.07.2014 observed that there was no material on the record to show that the respondent was earning Rs.50,000/- per month but he was well educated able bodied and was capable of maintaining his daughter and allowed Rs.3000/- per month for petitioner no.2 from the date of the application. With respect to the wife, it was observed that she was a practising lawyer. It noted that she had been regularly appearing in the Courts and the claim for maintenance was not justified.

4. A revision was filed by the wife seeking enhancement in the interim maintenance allowed to the child and maintenance for herself. It was pleaded that she had recently started practising whereas respondent-husband was a B-Tec (Mechanical) and an MBA in Marketing from U.S. and had a handsome income of Rs.50,000/- per month and was also having rental income of Rs.50,000/- per month. The Revisional Court observed that there was no concealment by the petitioner that she was a lawyer and it would have been a case of concealment if there was proof that she was actually earning and there was no justification for throwing her case at the threshold.

5. The submission made on behalf of the husband was that one acre of land had been transferred in the name of wife as part of a compromise and she was estopped from claiming maintenance. This plea was also rejected as the Court observed that there was no final

settlement. It was observed that the wife was a beginner in the profession and dependent on her parents and she could be said to have the capacity to earn but actually she was not earning enough to maintain herself. It noted that the parties were living separately since 01.03.2011 and the husband had given his status on the Facebook account as separated and observed that the husband treated himself single for all intents and purposes. It was also observed that in the profile, the husband is shown to be giving presentation to students, meaning thereby he was working and as he was a B-Tec and had the earning capacity. Modifying the order, the Revisional Court allowed Rs.5,000/- per month to the wife and enhanced the maintenance from Rs.3000/- to Rs.5,000/- per month for the child.

6. Aggrieved by the order, this petition has been filed by the husband.

7. I have heard counsel for both the sides.

8. The submission made on behalf of the petitioner is that the father of the petitioner had executed a release deed on 22.10.2008 in favour of respondent no.1 with respect to 7 Kanal 7 Marlas of land, situated within the revenue estate of Baluda, which was of more than Rs.2 crores. It was urged that the wife had made false complaints to pressurize the petitioner and his family and had got the land transferred and the claim for maintenance was not justified. It was urged that the wife was practising in the District Courts at Rewari since 2009 and the Magistrate dealing with the case had noted that she had been making several appearance and therefore, the maintenance was not allowed. It was urged that there was no material before the Court

that the petitioner was earning Rs.50,000/- per month and the order has been passed on assumptions. It was urged that the petition was ready to pay Rs.3,000/- per month for the child.

9. On the other hand, the submission on behalf of the respondents was that the wife had started practising recently and she is a struggler and a lawyer has to put a number of years before they can actually start earning a handsome amount. It was urged that the husband had gone to U.S. for higher studies and a wrong plea had been taken that he was a salesman and getting Rs.7,000/- per month.

10. The parties are litigating on the issue of maintenance to be paid by the husband. None of the parties had placed any material before the Court to enable it to make an assessment. There are allegations and counter allegations. The wife pleading that the husband was highly qualified and had handsome income while the husband pleading that the wife was a practising lawyer since 2009 and he was a salesman. The trial Magistrate before whom the wife had been appearing as lawyer, had observed that she had been appearing in number of cases and it only allowed maintenance for the child. In revision, though there was no additional material, the revisional Court modified the order and allowed Rs.5,000/- per month to the wife and Rs.5,000/- to the child. There is no material on the record to show whether the child was old enough and was going to school. The wife is practising in the district Courts. There is no material to assess as to when the wife had completed her education and when she had started practising. These facts were not revealed in the pleadings. The matter could not have been decided till the parties had produced some

cogent material before the Court. Generally the wife exaggerates the income of her husband while the husband tries to show lesser income and more responsibilities. When such differing claims are there, it is for the Court to strike a balance and see that reasonable maintenance should be granted by taking into account the income potentialities of the husband. The quantum must be decided on the facts of each case and it should in no way be a burdensome for the husband. The income potentialities of the husband, the status of the parties and their background prior to the marriage are some of the factors that they have to be taken into consideration at the time of determining the quantum of interim maintenance. The revisional Court could not have allowed higher maintenance to the wife on probabilities. In the given circumstances, it would be appropriate to allow Rs.3,000/- for the child and Rs.4,000/- for the wife. The interim maintenance granted shall not be taken into consideration at the time of the final disposal of the case.

11. The trial Court would expedite and decide the main petition preferably within six months. The parties in turn would not seek unnecessary adjournments.

With the above modification and directions, the petition is partly allowed.

24.07.2015

sunil

(ANITA CHAUDHRY)
JUDGE