

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No. M-33550 of 2015

Date of Decision: 19.10.2015

Sukhjeet Kaur & another

...Petitioner(s)

Versus

Taranjit Singh

...Respondent(s)

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. Bhavyadeep Walia, Advocate
for the petitioners.

HARI PAL VERMA J.(Oral)

Petitioners namely Sukhjeet Kaur wife of Taranjit Singh and Diljashan Singh, minor son of Taranjit Singh, have filed the instant petition under Sections 482 CrPC for enhancement of the amount of maintenance by modifying the order dated 16.10.2014 passed by Judicial Magistrate Ist Class, Rajpura and order dated 18.2.2015 passed by Additional Sessions Judge, Patiala.

Brief facts of the case are that petitioner no.1 - Sukhjeet Kaur got married with respondent-Taranjit Singh on 18.11.2004 and out of this wedlock, a male child namely Diljashan Singh was born. The parents of petitioner no.1 had performed a good marriage by spending Rs.10,25,000/- and had given sufficient dowry articles at the time of marriage. However, after the marriage, respondent-

husband and his family members started harassing the petitioner no.1 on the ground that she has brought less dowry. It is stated that the petitioner no.1 is doing M.Sc. (IT) from Punjab Technical University Learning Centre at Zirakpur, but the petitioners have no source of income and are unable to maintain themselves, whereas the respondent is working as Reliance Recovery Agent and as well as a property dealer and as such, he is earning more than Rs.50,000/- per month. He also possesses sufficient agricultural land at Village Mathiara, Tehsil Rajpura. The petitioner has lodged FIR No.12 dated 3.2.2008 under Sections 406/498-A/506/323 IPC against the respondent and his parents.

The petitioners have filed a petition under Section 125 CrPC for grant of maintenance allowance which was contested by the respondent-husband, wherein the relationship of the parties has been admitted. However, it has been denied that the parents of the petitioners have spent Rs.10,25,000/- on marriage. It has been submitted that the marriage was simple one and no marriage articles were given to the respondent and his parents. The salary certificate of the respondent was also attached, showing his monthly salary at Rs.13,000/- per month and it was submitted even if the respondent is not working in any company, he being a qualified person can earn higher than this amount if he takes up a new job at a new place, whereas, learned counsel for the respondent contested the petition before the trial Court and submitted that owing to various litigations pending against him, the respondent was out of job and is

now not earning to sustain his livelihood, what to talk of giving maintenance to the petitioners. He submitted that the salary certificate attached by the petitioners pertained to the year 2007, whereas the present petition was filed in November, 2008 and therefore, the said certificate is not relevant.

Considering the rival contentions of the parties, learned trial Court has awarded maintenance to the petitioners as under:-

“11. It is a known fact that in today’s times of high inflation index, education and allied necessities of a child are equally expensive. To provide for the same is an onus that naturally comes on a father. However, keeping in mind the socio-economic conditions of the parties and that nothing is produced by the petitioner on record to prove the respondent’s actual income, an amount of Rs.2500/- per month to petitioner no.1 and Rs.1500/- per month to petitioner no.2 is considered to be the bare minimum which the respondent must pay to the petitioner as maintenance allowance. The allowance is to be paid from the date of this order. It is ordered accordingly. File be consigned to the record room.”

Not satisfied with the maintenance so awarded by the trial Court vide order dated 16.10.2014, the petitioner preferred revision petition before learned Additional Sessions Judge, Patiala, whereupon, learned revisionary Court held that no interference is warranted into the well-reasoned order passed by the trial Court, as the same is based on proper appreciation of facts on record. However, learned revisionary Court granted litigation expenses to the tune of Rs.5,000/- to the petitioners.

It is in these circumstances the petitioners have filed the present petition for enhancement of the amount of maintenance granted by the Courts below.

Learned counsel for the petitioners contends that the maintenance awarded by the trial Court, as affirmed by the revisionary Court is on the lower side. The respondent is a well qualified person and once he was drawing Rs.13,000/- per month in the year 2007, his salary is ought to increase. Even if he is not working, he has capacity to earn more than what he was earning in the year 2007. He further submits that in the order granting maintenance from the date of order, no reason has been given by the Courts below and the same is liable to be set aside in view of judgment of Hon'ble Apex Court in the case of **Jaiminiben Hirenghai Vyas and another v. Hirenghai Rameshchandra Vyas and another 2015(1) RCR (Criminal) 84.** Similarly, reliance was also placed upon **Bhuwan Mohan Singh v. Meena & ors.2014(3) RCR (Civil) 749.**

I have heard learned counsel for the petitioners and perused the impugned judgments as well as the judgments referred above.

Hon'ble Apex Court in both the cases, relied upon by learned counsel for the petitioners in **Jaiminiben Hirenghai Vyas and another's case** (*supra*) as well as **Bhuwan Mohan Singh's case** (*supra*), has clearly held that the Court has the discretion to grant maintenance either from the date of application or from the

date of order, however, for granting maintenance from the date of application, no specific reasons are required to be recorded. The very object of grant of maintenance to the wife, as referred in **Bhuwan Mohan Singh's case** (*supra*) is as under:-

- (i) Section 125 Cr.P.C. was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home.
- (ii) The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else.
- (iii) She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband.
- (iv) A situation is not to be maladroitley created whereunder she is compelled to resign to her fate and think of the "dust unto dust".

In **Shail Kumari Devi and another v. Krishan Bhagwal Pathak alias Kishun B. Pathak 2008(3) RCR (Criminal) 842**, Hon'ble the Apex Court while referring to Code of Criminal Procedure (Amendment) Act, 2001 has held that even after the amendment of 2001, an order for payment of maintenance can be passed either from the date of order or when express order is made to pay maintenance from the date of application, then the amount of maintenance may be paid from that date. Similarly, in **Krishna Jain**

v. *Dharam Raj Jain 1991(3) RCR (Criminal) 145 (MP)*, it has been stated that to hold that normally maintenance should be made payable from the date of the order and not from the date of the application, unless such order is backed by reasons, would amount to inserting something more in the sub-section, which the legislature never intended.

In the present case, the earnings of the respondent-husband have not been established or proved by the petitioner-wife. Except that he was drawing monthly salary of Rs.13,000/- in 2007, no material has been placed on record by learned counsel for the petitioner in support of his contention that income of the respondent-husband is more than Rs.13,000/- per month.

Therefore, taking into consideration the peculiar facts of the case and the financial position of the respondent-husband, this Court feels that the orders passed by both the Courts do not warrant any interference by this Court and no ground for modification of the same called for, as learned Additional Sessions Judge, Patiala has already granted litigation expenses to the tune of Rs.5,000/- to the petitioners over and above the maintenance awarded by the trial Court vide order dated 16.10.2014.

The petition is dismissed.

October 19, 2015
AK

(HARI PAL VERMA)
JUDGE