

CRR-1441-2010

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

**CRR-1441-2010 (O & M)
Date of Decision: 30.04.2015**

Smt. Savita Devi and another

... Petitioner(s)

Versus

Naresh Kumar

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. Yash Paul Khullar, Advocate,
for the petitioners.

Mr. Babbar Bhan, Advocate,
for the respondent.

Paramjeet Singh, J.

CRM-32321-2014

Allowed, as prayed. Affidavit of petitioner no.1 is taken on record.

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Challenge in this revision petition is to the order dated 25.01.2010 passed by learned District Judge, Family Court, Hisar whereby application under Section 127 of the Code of Criminal

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Procedure (in short, 'Cr.P.C.') filed by the petitioners seeking enhancement of maintenance, has been dismissed.

Petitioner no.1 and respondent got married on 09.05.1983 and cohabited for some time and from the said wedlock, a daughter, namely, Baby Rekha, was born and thereafter differences cropped up.

The petitioners had earlier filed an application under Section 125 Cr.P.C. claiming maintenance from the respondent which was allowed vide order dated 07.12.1995 whereby respondent was directed to pay ₹300/- per month to petitioner no.1 and ₹200/- per month to petitioner no.2 as maintenance. Thereafter, the petitioners approached the Court under Section 127 Cr.P.C. for enhancement of maintenance from ₹500/- to ₹5,000/- per month.

The facts which were mentioned in the application under Section 125 Cr.P.C. are not necessary for decision of this petition.

In the application under Section 127 Cr.P.C., it was pleaded that now-a-days, prices are very high and maintenance awarded to the petitioners is on the lower side. The respondent is in govt. service and is getting the salary of ₹8,000/- per month. However, during the pendency of petition, salary statement of respondent showing gross-salary has been produced. As per the salary statement for the month of October, 2014, gross monthly salary of the respondent is ₹35,021/-. It is pleaded by the petitioners that salary of respondent has now increased manifold and he is now getting salary @ ₹35,000/- per month as is evident from salary

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slip (Annexure A-1).

I have heard learned counsel for the parties and perused the record.

During the course of arguments, it has been admitted by learned counsel for the petitioners that petitioner no.2 has got married. Although, no date of marriage has been mentioned, but in view of the admission of both parties qua marriage, petitioner no.2 is not entitled for any maintenance after marriage, therefore, petition qua petitioner no.2 is dismissed.

Learned counsel for petitioner no.1 has made reference to salary slip (Annexure A-1) which shows that salary of the respondent has increased from time to time. When the application for enhancement of maintenance was moved, the respondent was getting salary of ₹8,000/- per month and thereafter the same has increased to ₹35,000/-. The trial Court awarded maintenance under Section 125 Cr.P.C. in the year 1995 and since then, prices have become very high. Learned counsel has further contended that application for maintenance was filed prior to amendment in Section 125 Cr.P.C. As per the old provision of Section 125 Cr.P.C, maximum ₹500/- per month could be awarded as maintenance whereas under the amended provision, there is no upper cap.

Per contra, learned counsel for the respondent has contended that petitioner no.1 is working as helper in Aanganwari

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Department and getting handsome salary. The maintenance sought by the petitioners is at the higher side. Petitioner no.1 has also inherited 1½ acres of land and is in cultivating possession.

I have considered the rival contentions of learned counsel for the parties.

In this matter involving payment of maintenance to the destitute wife, initially an application under Section 125 Cr.P.C. was filed in the year 1989. Now, the Family Court has dismissed the application for enhancement of maintenance merely on the ground that marriage of petitioner no.2 has been solemnized, therefore, there is no ground for enhancement of maintenance allowance. The Family Court has not taken into consideration the fact that petitioner no.1 has to maintain herself and has also to incur the expenses to meet out the daily needs. The salary of respondent has also not been taken into consideration by the Family Court. Perusal of salary statement (Annexure A-1) reveals that gross salary of the respondent was ₹35,000/- in the month of October, 2014 and after deduction, he got approximately ₹15,000/-. As far as salary of respondent at the time of filing of application in the year 2007 is concerned, it must be much more than ₹8,000/- as after revision of pay scales of the employees w.e.f. 01.01.2006, the minimum salary of even class-IV employee was much more. The respondent has started deductions from his salary under various heads which resulted into decrease in his carry home salary. The

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maintenance granted by the trial Court under Section 125 Cr.P.C. is very meager. In these days, the prices are very high and it is very difficult for a lady to meet out her daily needs over ₹300/- awarded by the trial Court. The respondent has claimed that petitioner no.1 is working as helper in Aanganwari Department and earning ₹3,500/- per month. On this sole ground, the respondent-husband cannot run away from his pious duty to maintain his legally wedded wife.

Having regard to the spirit behind the provisions of law for maintenance and manifold increase in the prices of essential commodities, this Court deems it fit and proper that at least, reasonable maintenance should have been awarded in favour of petitioner no.1 considering the salary of respondent. Vide salary slip (Annexure A-1), the respondent is shown to have got gross-salary of ₹35,000/- in the month of October, 2014. It is not only a moral duty but also a legal duty cast upon the respondent-husband to maintain his wife-petitioner no.1.

In these circumstances particularly when the daughter-petitioner no.2 is not being granted enhancement of maintenance under Section 127 Cr.P.C as she has admittedly married, though no date of marriage is on record, this Court is of considered view that impugned order dated 25.01.2010 is liable to be set aside and maintenance initially granted to petitioner no.1 deserves to be enhanced. Ordered accordingly. Keeping in view that application for enhancement was filed in January, 2007 and salary of the respondent kept on increasing periodically on

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account of annual increments and other allowances, this Court deems it fit to grant ₹10,000/- per month to petitioner no.1 from the date of filing of application for enhancement of maintenance. It is so ordered. The amount of ₹10,000/- will be treated to have been determined on average basis of salary of the respondent in 2007 and present salary. The amount of maintenance, if any paid by the respondent to petitioner no.1, shall be adjusted against the enhanced maintenance.

Disposed of in the aforementioned terms.

30.04.2015
parveen kumar

(Paramjeet Singh)
Judge