

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Crl. Revn No. 1969 of 2011 (O&M)
Date of decision : 10.02.2015

Ashu @ Asha and anr.Petitioners

versus

Sunil Kumar ...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.K. Yadav, Advocate
for the petitioner.

Mr. Rakesh Dhiman, Advocate
for the respondent.

RITU BAHRI , J. (Oral)

Petitioners are seeking modification of judgment dated 04.05.2011 passed by Judge Family Court Gurgaon vide which the respondent-husband has been ordered to pay only Rs.3000/-per month to petitioner No. 1 and Rs.2000/-per month to petitioner No. 2, which is on the lower side.

Petitioner No. 1 was married to the respondent-husband on 07.05.1998 as per Hindu rites and ceremonies. Out of this wedlock, a daughter namely Latika Sharma-petitioner No. 2 was born in Madras and the respondent was not happy with the birth of girl child and gave beatings to petitioner No. 1. On 09.05.2007, an application was moved by petitioner No. 1 to the office of the respondent-husband whereupon he admitted his fault by giving affidavit to the

effect that if in future he would treat petitioner No. 1 with cruelty or desert her, then she can make a complaint to the police. However, the respondent went to his service and did not provide any maintenance to the petitioners and even did not tell his place of posting. Petitioner No. 1 is unemployed and used to take money from her brother for schooling of petitioner No. 2 and their maintenance. The respondent-husband is serving in Civilian Navy and is getting salary of Rs.40,000/- per month. Thereafter, the petitioners filed a petition with a prayer that they be awarded Rs.25,000/- per month as maintenance allowance. A notice was given to the respondent and he filed his written statement denying the allegations levelled by the petitioners in her petition. He stated that petitioner No. 1 is living in her matrimonial home but she has refused to live with him without any reasonable cause. The attitude of petitioner No. 1 is not good towards the respondent and she is in the habit of making false complaints. Further, petitioner No. 1 has turned out the old parents of the respondent from their house and has rented out one portion and is earning Rs.5000/- per months. She is also taking private tuitions of the students upto 8th standard and is having 15 students and charging Rs.350/- per month from each student. The respondent is serving in Indian Navy and is getting salary of Rs.14,000/- per month and he has liability to support his aged parents, brother and sisters. As

per deposition of R.W.2 Daya Nand (father of the respondent), petitioner No. 1 is still living in her matrimonial house and she has turned out him and his wife from the house. Petitioner No. 1 has rented out one portion of the matrimonial house and is earning rental income of Rs./- per month besides earning of Rs./- per month by taking private tuition.

On the other hand, petitioners have placed on record the pay slip of the respondent for the month of January, 2001 (Ex PA) which shows that after deduction, the net pay of the respondent was Rs.14,909/-. The respondent has admitted his income to be that of Rs.14000/- per month while appearing as RW1. But the respondent has not placed on record any evidence or proof to any income of the petitioner.

Thus, the Court by taking the income of the respondent as Rs.14,909/- ordered him to pay Rs.3000/-per month to petitioner No. 1 and Rs.2000/- per month to petitioner No. 2.

It is not disputed that petitioners are living in one portion of the house, which belongs to the respondent. There was no evidence to show that petitioner No. 1 is having rental income of Rs.5,000/- besides earning Rs.6000/- per month by taking tuition.

Keeping in view the fact the petitioners are

residing in the house of her husband i.e respondent, the maintenance awarded to them i.e Rs.5000/- per months has to be examined now by this Court, in view of the salary slip placed on record by learned counsel for the petitioners for the month of February, 2014.

A perusal of salary slip of the respondent shows that after deduction, he is getting net pay of Rs.21092

Learned counsel for the petitioners has argued that GPF of Rs.12000/- deducted should be taken into account for assessing the maintenance. He has further argued that the maintenance awarded to the petitioner is on the lower side as earlier also the Court has erred in law while assessing the income of the respondent-husband on the basis of salary slip Ex PA as the gross pay of the respondent-husband is Rs.29293/- per month while the deduction was of Rs.14,385/-. Out of this amount of Rs.14385/-, Rs.10,000/- were cleverly started got deducted in GPF by the respondent-husband in order to bring down the carry home salary.

Now, the salary slip of February 2014 is not being disputed by learned counsel for the respondent. Thus, the Court can proceed to enhance maintenance by taking into consideration the salary slip (Ex R-1).

Learned counsel for the petitioners has argued that Rs.12,000/- which is being deducted from the salary of

the respondent towards GPF be included in the net salary of the respondent to assess the maintenance.

A perusal of the salary slip shows that the total salary of the respondent is Rs.41,2111 and out of which, Rs.12000/- is being deducted towards GPF, Rs.7004/- towards TDS, Rs.60 towards CGEIS, Rs.380/- towards LF, Rs.200/- towards E&W, Rs.375 towards FA, Rs.100 towards DCRB and the net salary comes to Rs.21092/-. In the year 2001, his net salary was Rs.14,909/ and after a gap of almost 14 years the net salary comes to Rs.21092/-. It seems that GPF amount has been increased by the respondent-husband in order to bring down the carry home salary. The GPF amount has to be included in the net salary and after inclusion, the net salary comes to Rs.33000/- approximately, which is almost double.

Reference at this stage can be made to a judgment passed by Hon'ble the Supreme Court in a case of Manasvi Jain vs. DTC, 2014(3) RCR (Civil) 313 wherein the person died in a motor accident and was drawing a gross monthly salary of Rs.26950/-. While arriving at net income of the deceased for the purpose of deciding net monthly income of the deceased deductions towards various heads i.e G.P.F, House Rent, Insurance should not be excluded from salary except the Income Tax.

Hon'ble the Supreme Court in a case of Sunil

Sharma and others vs. Bachitar Singh and others, 2011(2) RCR (Civil) 708 has examined a case where the deceased who was in Government Service, it was held that for giving him compensation, his income be assessed on basis of gross salary without making deductions on account of HRA, CCA and medical allowance, EPF and GIS.

Reference at this stage can further be made to a judgment of Patna High Court in a case of Bijoy Narayan Singh @ Bijay Narayan Singh vs. State of Bihar and anr., 2009(57) BLJR 1331 wherein the Court was considering a case of a husband, who had filed a revision petition under Section 125 Cr.P.C against the order of the Court below granting the maintenance to a wife to Rs.4000/- by taking the gross salary of husband as Rs.19000/- per month. The petition of the husband was set aside and it was held that the total deduction of Rs.11474/- i.e Festival Advance, Miscellaneous and term loan is to be taken into consideration while granting maintenance to the wife.

Similarly, the Calcutta High Court in a case of Sudeshna Bhaduri vs. State passed in CRR No. 67 of 2011 decided on 06.07.2012 was examining a case of wife who had challenged the order of maintenance and was seeking enhancement of the maintenance amount. The husband was a Medical Officer under Government and after deduction, his net salary was Rs.35,000/- per month. So, his gross salary

was presumed at Rs.50,000/- per month and the wife was granted Rs.12000/- per month as maintenance.

In the present case, the net income of respondent is Rs.21092/- and he is giving Rs.12,000/- towards GPF, which is to be included in his salary, as per the ratio of the above said judgments and after inclusion, the salary comes to Rs.33000/- approximately and now 1/3rd from his salary has to be deducted towards maintenance which comes to approximately Rs.10000/-.

Thus, by taking the salary of the respondent to be Rs.33,000/- per month, the respondent-husband is directed to pay Rs.6000/-per month to petitioner No. 1 instead of Rs.3000/- and Rs.4000/- to petitioner No. 2 instead of Rs.2000/- per month w.e.f from the date of passing of this order.

Accordingly, the present petition is allowed

10.02.2015
G Arora

(RITU BAHRI)
JUDGE