

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

**Crl. Revn. No. 24 of 2011 (O&M)
Date of decision : 03.12.2015**

Jagdish Kumar Bhakri

..... Petitioners

versus

Manju Bhakri

... Respondent

with

Crl. Revn. No. 244 of 2011 (O&M)

Manju Bhakri

..... Petitioners

versus

Jagdish Kumar Bhakri

... Respondents

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? No

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. A.P. Bhandari, Advocate
for the petitioner in CRR No. 24 of 2011 &
for the respondent in CRR No. 244 of 2011.

Mr. Kunal Dawar, Advocate
for the petitioner in CRR No. 244 of 2011 &
for the respondent in CRR No. 24 of 2011.

ANITA CHAUDHRY, J.

1. Two separate revision petitions have been preferred against the order dated 21.09.2010, passed by the District Judge, Family Court, Faridabad who allowed the petition filed under Section 125 Cr.P.C. granting maintenance to the tune of Rs.7,000/- per month to the wife, payable from the date of filing of the petition. The husband is aggrieved as the amount allowed to the wife was on the higher side. The wife is seeking modification and enhancement of the amount.

2. It is necessary to recapitulate the facts and give a brief narration. Manju and Jagdish were married in 1978. Two children were born to them in 1980 and 1983. The husband was working in Bank of Baroda in Punjab. The husband got transferred to various places and lastly in 1992 the family settled in Faridabad. The petition under Section 125 Cr.P.C. was filed in 2007. The wife had undergone a gallbladder operation in June, 1992. Her sister had come to stay with them. The wife levelled allegations against her sister and alleged she and her husband were in a relationship and the husband started spending a huge amount on her. The wife objected to the frequent visits made by her husband to her sister's house. In 2005 their son shifted to Sonapat as he had got admission in a college. The parents also shifted temporarily to Sonapat and took a rented house. The husband refused to pay for the house-hold expenses. In March, 2006 they returned

to Faridabad and the husband as by then taken voluntarily retirement. The petitioner claimed that her husband had retired from the bank and was getting Rs.10,000/- per month as pension and had received a sum of Rs.17 lacs under the voluntarily retirement scheme. It was pleaded that the husband was working with M/s. APD Engineers and was getting Rs.10,000/- per month as salary. The petitioner was claiming Rs.10,000/- per month as maintenance besides litigation expenses.

3. The respondent-husband denied the allegations and pleaded that the wife had illegally withdrawn a sum of Rs.3.4 lacs from his post office account. It was pleaded that respondent was physically handicapped as his right knee was totally stiff and he had problems in walking. It was pleaded that baseless allegations had been levelled. He filed a divorce petition which was later on withdrawn after mediation. It was pleaded that in the divorce petition, the wife had linked his name to some other lady. It was pleaded that the wife harassed him and called him 'Langra' publically and humiliated him.

4. With respect to the income, it was pleaded that they had completed the construction of the house in 1999 and the petitioner-wife had started business from home. It was pleaded that the husband had spent a lot of money on the business but the petitioner incurred losses. The respondent denied that he

had joined a private job or was getting salary of Rs.10,000/- per month. In para no.11 of the reply, the husband had given the details of the investments made from the sums received on retirement. It was pleaded that he was a pensioner and the pension was the only source of income.

5. Both the sides led evidence.

6. By way of interim arrangement, the Family Court in January, 2010 had allowed Rs.3,000/- per month as interim maintenance besides litigation expenses.

7. Both the sides examined the witnesses. The Family Court referred to the income-tax return of 2009-2010 and observed that there was annual income to the tune of Rs.2,75,631/- which came to about Rs.22,000/- per month while the pension account only revealed that he was getting Rs.13,000/- per month. It gave a finding that the monthly income of the respondent was not less than Rs.20,000/- per month and awarded Rs.7,000/- per month to the petitioner-wife from the date of petition.

8. In Crl. Revn. No.24 of 2011 has been filed by the husband. It was pleaded that an exorbitant amount had been allowed to the wife and in October, 2007 his pension was only Rs.9,545/- per month after revision. It was pleaded that the Family Court had considered the income to be Rs.2,75,631/- per annum for the year 2009-2010 but that amount included the arrears of the previous years and the pension for that year

was only Rs.1,34,119/-. It was pleaded that the certificate returns issued by the Bank of Baroda would clarify the position and as the pension in 2007 was only Rs.9,545/- per month, the Court had gone wrong in taking the figure to be Rs.22,000/- per month for calculating maintenance. It was further pleaded that the petitioner had withdrawn Rs.3.4 lacs from his account and that should have been taken into consideration.

9. In Crl. Revision No.244 of 2011, the wife was seeking enhancement of the maintenance amount pleading that the husband was working with M/s. ADS Engineering and there was concealment on the part of the husband with respect to his income. It was pleaded that income of the following years was Rs.30,000/- per month and 1/3rd of the income should have been allowed as maintenance and sought modification in the order passed by the Family Court.

10. I have heard both the sides.

11. Certain facts are not disputed and they need not detain us. The parties were married in 1978 and they have two children who are major and settled in life. The husband had taken voluntarily retirement and is getting pension. In these petitions we are only concerned as to whether the amount allowed to the wife was on the higher side or the amount needs to be increased.

12. The petitioner beside examining herself had examined her son. She had also examined a Tax Assistant

from the office of the income-tax who had produced the income-tax returns Exhibit PW3/D and other statements and Form 16.

13 Sanjay Kumar Rana PW4 an official from the Bank of Baroda brought the account statement to show the pension paid from August, 2008 to August, 2010 and proved statements Ex.PW4/A and PW4/B.

14. The respondent-husband on his side examined the official from the Post Office and proved the certificate Ex.R1. The respondent examined himself as RW2 and made the same statement as made by him in his reply. He had stated that his pension at the time of filing of the petition was Rs.9,545/- per month. Jawahar Lal Kataria RW3 the Sub-Postmaster brought the summoned record and stated that as per their record, a sum of Rs.2,17,800/- was withdrawn by Manju on 04.06.2007 and another sum of Rs.1,18,800/- was withdrawn by Manju on 09.06.2007.

15. The counsel for the petitioner-husband in CRR-24-2011 referred to the income-tax return placed on record by the petitioner and referred to Annexure P-1 filed along with the petition to urge that a certificate had been given by Bank of Baroda which gives the breakup of the pension that was paid in 2009-2010. It was urged that the pension paid from February, 2009 till 2010 was Rs.1,34,119/- and the certificate refers to the arrears of pension to the tune of Rs.94,000/- which were

from April, 2001 to October, 2009. It was urged that the income-tax return itself was not sufficient to award maintenance and the husband had made a statement on oath that his pension was not more than Rs.9,500/- per month and the District Judge, Family Court went wrong in relying upon the income-tax return. It was urged that no evidence could be led by the wife to show that post-retirement he was working. It was urged that the husband was physically handicapped having a stiff knee and he was unable to walk properly. It was urged that the wife was living in the same house and if the maintenance was to be awarded from the date of petition then the Court should have considered the pension the petitioner was receiving in that year and accordingly the order be modified. Reliance was placed upon ***A.N. Nagarjuna Vs. K.C. Nanjula 2005(3) CCC 625 (Karnataka) and Shail Kumari Devi and another Vs. Krishan Bhagwan Pathak (2008)9 SCC 632.***

16. The submission on the other hand was that the conduct of the husband has to be seen and he has sold the house and they have information that the property was sold in March, 2012 and though the wife was residing in that house but some day the purchaser would dispossess them. It was urged that the husband has not come clean and has not disclosed his real income. It was urged that besides the amount received on voluntarily retirement, he had got the Provident Fund and Gratuity which has not been explained and the maintenance

should be raised considering the cost of living.

17. Refuting the arguments, the submission on behalf of the husband was that the husband had explained each amount in his written statement and nothing had been concealed. The counsel stated that he was not aware that if the house had been sold by the husband.

18. I have gone through the record and I find that the only evidence led by the wife with respect to the income of the husband was the income-tax return. Form 16 for the year 2009-2010 refers to the fact that the amount indicated therein was the pension and arrears. The petitioner has produced the certificate Annexure P1 attached with the petition which shows the breakup of the amount received. Annexure P-3 shows that the arrears which had been received from time to time. The certificate issued by the Bank of Baroda clearly establishes that the amount indicated in the income-tax return was not the pension paid for that year but it also included the arrears of pension from April, 2001 to October, 2009. The husband had stated that he was getting pension of Rs.9,545/- per month. The petition had been filed in October, 2007. The calculation sheet made available by the respondent-husband with the revision shows that he was getting Rs.9,545/- per month as pension from September, 2008 onwards. There was no evidence to show that the husband had additional income from any other source.

19. The voluntarily retirement had been taken over a decade ago. The husband had explained that he had spent some amount in the construction of the house. The wife had also withdrawn two Fixed Deposit Receipts. I am of the view that those amounts cannot be taken into account for calculating the maintenance. It was only the pension amount which could have been considered for granting maintenance. Even before this Court the wife has not been able to produce any document contrary to the documents submitted by the husband. Therefore, the maintenance awarded by the Family Court, Faridabad needs to be modified and reduced to Rs.3,500/- per month which would be payable from the date of the petition. If more amount has been paid that will be adjusted in future. If there is any excess that would be paid.

The Crl. Revn No.24 of 2011, filed by the husband is partly allowed and Crl. Revn No.244 of 2011, filed by the wife is dismissed.

Summoned files be sent back.

**(ANITA CHAUDHRY)
JUDGE**

03.12.2015
Sunil