

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

**Date of decision : 21.01.2015**

**1.**

**CRM-M-5689-2014(O&M)**

Smt.Seema and others

... Petitioners

Versus

State of Haryana

... Respondent

**2.**

**CRM-M-15418-2014**

Virender Kumar

... Petitioner

Versus

Seema and others

... Respondents

***CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL***

Present: Mr.Vivek Goel, Advocate  
for the petitioners (in CRM-M-5689-2014)  
& for the respondents (in CRM-M-15418-2014).

Mr.Rajesh Gaur, Addl. A. G.Haryana.

Ms.Puja Chopra, Advocate  
for respondent No.2(in CRM-M-5689-2014) &  
for the petitioner (in CRM-M-15418-2014).

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**REKHA MITTAL, J.**

By way of this order, I shall dispose of CRM-A-5689-2014

'Smt.Seema and others Vs. State of Haryana' and CRM-M-15418-2014

“Virender Kumar Vs. Seema and others” as these have emerged out of same

orders dated 23.09.2013 passed by the Chief Judicial Magistrate, Kurukshetra and dated 22.01.2014 passed by the Additional Sessions Judge, Kurukshetra whereby Seema and others have been awarded maintenance under Section 125 of the Code of Criminal Procedure (in short 'Cr.P.C.'). For the sake of convenience, the facts are taken from CRM-M-5684-2014.

Smt.Seema was married to Virender Kumar on 26.05.2003 and out of wedlock of the parties, two children namely Chahat and Ridhi were born and they are presently residing with their mother at Kurukshetra in the house of parents of Smt.Seema since 2007. The petitioners claimed maintenance against Virender Kumar on the premise that they have been neglected by the respondent and have no source of income to maintain themselves. Smt.Seema was taunted, teased and harassed by her husband and his family members on the pretext of insufficient dowry, demand of esteem car and cash amount.

The respondent is statedly residing in the joint family and owns huge movable and immovable property such as rice sheller, Kothi, a plot in model town, 5 shops at Pehowa, a shop of spare parts of tractors in the name of M/s Balaji Spare Parts, two shops at Ismailabad, a floor mill and 7 shops at Dhan Mandi and thus earning Rs.30,000/- per month. The respondent is running a dairy farm and from all sources, his income was stated to be Rs.40,000/- per month. The petitioners claimed an amount of Rs.20,000/- per month to meet expenses on their daily needs, education and other needs of the minor children.

The respondent filed the reply and, in turn, denied the allegations of the petitioners having been neglected by him and pleaded that

petitioner Seema is the guilty spouse. The answering respondent is working as Munim in J.K.Rice Land, Ismailabad at a monthly salary of Rs.5000/-.

The learned trial Court permitted the parties to lead evidence in support of their respective claims.

After bestowing its thoughtful consideration to the pleadings, evidence adduced and rival submissions made by counsel for the parties, the trial Court awarded maintenance to the tune of Rs.5000/- per month to petitioner Seema and Rs.3000/- each per month to the minor petitioners from the date of filing of the petition. They were also awarded Rs.5000/- as litigation expenses.

Feeling dissatisfied with the verdict of the learned trial Court, separate revisions were preferred by both the parties to impugn order dated 23.09.2013 and the petitions were decided by a single judgment dated 22.01.2014 passed by the Additional Sessions Judge, Kurukshetra vide which the revision petition filed by both the parties were dismissed and as a consequence, the order passed by the trial Court was affirmed.

Still feeling dissatisfied, both the parties have filed separate petitions under Section 482 Cr.P.C. to express their grievance against the orders passed by the Courts below.

Counsel for the petitioners contends that maintenance awarded is on lower side and liable to be enhanced. The minor children of the parties are studying in DAV Public School, Kurukshetra in Class 4<sup>th</sup> and 3<sup>rd</sup> respectively. For admission of children, the petitioner deposited Rs.12,735/- and 12,235/- for Chahat and Ridhi respectively. The monthly tuition fee of both the children is Rs.1540/- each. It is submitted that keeping in view the

expenses being incurred on education of the children coupled with their other needs, the maintenance awarded is liable to be enhanced. It is further submitted that prices of daily necessities of life are increasing day by day, therefore, the maintenance assessed by the trial Court would not be sufficient to satisfy their needs much less comforts. It is argued that the respondent is guilty of fabricating evidence that he is working as a Munim at a monthly salary of Rs.5000/- per month. The version of the respondent that he is working at a meager salary is unworthy of acceptance in the light of evidence on record that family of the respondent owns huge movable and immovable property and doing various business activities.

Counsel for the respondent, on the other hand, has strenuously argued that as petitioner Seema is guilty of withdrawing from the society of her husband without any reasonable cause or excuse, she is not entitled to get any maintenance. It is further argued that repeated efforts were made for rehabilitation of Seema along with minor children in the matrimonial home but she never tried to adjust with her husband. Counsel is fair enough to concede that when the parties were referred for mediation to the Mediation and Conciliation Centre of this Court, the petitioner did not agree for one time settlement and parting ways as she insisted that she was willing to go back and join her husband. Counsel has submitted that in view of the developments which took place for the past 10 years, the respondent-husband did not agree for resuming cohabitation but the same cannot be used against him.

With regard to quantum of maintenance, it is submitted that as the respondent is working in a rice sheller at a monthly salary of Rs.5000/-,

the maintenance awarded by the trial Court and affirmed in revision is liable to be reduced. Counsel has neither disputed that the children are studying in DAV School, Kurukshetra nor the documents placed on record in regard to annual fee and monthly tuition fee being paid to the school. However, it is submitted that as the government schools which are less expensive are available at Kurukshetra and the respondent is not in a position to pay more than what he is earning, he cannot be forced to meet expenses on education of the children beyond his financial capacity.

I have heard counsel for the parties and perused the records.

A careful reading of the facts elicited during cross-examination of the petitioner and respondent would make it crystal clear that the petitioner always wanted to live with her husband. The Panchayats were convened for reconciliation between the parties and even dispute was settled at different intervals and in pursuance thereof, the petitioner went back to her matrimonial home. During her cross-examination, she has categorically and candidly stated that she is ready to go back to her matrimonial home and does not agree for divorce. On the other hand, the respondent at one point of time filed a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights but later withdrew the petition. He thereafter filed a petition for divorce under Section 13 of the Hindu Marriage Act which was dismissed by the trial Court and appeal against the said judgment is pending before this Court. Keeping in view the evidence on record, I find myself unable to accept submissions of the respondent that Smt. Seema is the guilty spouse and, therefore, she has rendered herself ineligible to get maintenance.

This brings the Court to another issue in regard to quantum of maintenance payable to the petitioners. The petitioner reiterated her version that the respondent is residing in the joint family and the family has various properties as well as different business activities. Counsel for the respondent failed to impeach her credibility or elicit any such facts that her testimony is not truthful. On the other hand, the respondent during his cross-examination made vague denial in regard to assets and sources of income available to his joint family. Conversely, the respondent put a vain attempt by raising the plea that he is working as a Munim at a meager salary of Rs.5000/- per month. The respondent failed to produce any documentary evidence to establish his plea in this regard. He examined Sanjiv Kumar in support of his plea that he is working as a Munim with J.K.Rice Land Ismailabad. The witness failed to produce any record i.e. ledger, income tax records etc. of the aforesaid mill despite an opportunity provided for the purpose. It appears that the respondent raised such a plea to escape his liability to pay adequate maintenance to his wife and children. Moreover, the respondent has admitted that he was involved in family business at the time of filing application under Section 125 Cr.P.c. but later in the year 2008 he joined J.K.Rice Land. It is difficult to accept to reason that a family who is owning various businesses and properties including shops, rice mill, floor mill and agricultural land etc. could afford to lose one of its family members by permitting him to work as a Munim with somebody at a meager salary of Rs.5000/- per month. This apart, the respondent gave vague reply in regard to business and properties of joint family and this fact alone is sufficient to hold that he is not worthy of credence. The respondent cannot be allowed to

escape his legal liability by producing incredible evidence. At the same time, there is no clear evidence on record with regard to income of the joint family, number of members entitle to share that income or the persons dependent upon earnings of the joint family. Taking a conservative view of income of the joint family, I am of the considered opinion that share of the respondent in the income would not be less than Rs.30,000/- to 40,000/- per month. Keeping in view income of the respondent, when examined in the light of needs of the petitioners i.e. food, housing, clothing and education of the children etc., I am of the considered opinion that the petitioners are entitled to maintenance more than assessed by the Courts below. Accordingly, Seema is held entitled to maintenance @ Rs.6000/- per month and the minor petitioners shall be entitled to maintenance @ Rs.4000/- each per month from the date of filing of petition before the trial Court.

For the reasons aforesaid, CRM-M-5689-2014 is partly allowed in the aforesaid terms. As a natural corollary, CRM-M-15418-2014 is hereby dismissed. No order as to costs.

**(REKHA MITTAL)**  
**JUDGE**

**January 21, 2015.**

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