

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

CRR No.4019 of 2012

Date of Decision: May 11, 2015

Smt Rajni

...Petitioner

Versus

Rakesh

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Ramender Chauhan, Advocate
for the petitioner.

Mr. T.C. Dhanwal, Advocate
for the respondent.

FATEH DEEP SINGH, J.

This is a revision by the disgruntled wife-Rajni against the respondent-husband Rakesh, challenging impugned orders dated 22.11.2012 of learned District Judge (Family Court), Bhiwani dismissing her petition preferred under Section 125 Cr.P.C. seeking grant of maintenance allowance.

Heard learned counsel for the parties and perused the records of the case.

Admittedly, the couple have entered into a wedlock on 8.12.2010 and no child could be born out of this wedlock. It is claimed by the wife that due to matrimonial dispute since 16.3.2011 she is forced to live at her parental house on account of physical and mental cruelty by the husband and which fact has been absolutely denied by the husband in his response claiming that the wife was a quarrelsome lady and her behaviour was abnormal towards the everyone in the house. The husband claims that he is labourer earning ₹2500/- per

month, whereas, wife is running a boutique. On the other hand stand of the wife is that the husband is working in Transport Corporation of India and getting ₹25,000/- per month as salary.

The only semblance of evidence that has come forth from the side of the wife is her purely oral testimony as PW1 and similar is that of her father PW2 Narender Singh, whereas, the husband has stepped into the witness box as RW1 and examined his father Prahlad Singh as RW2. The learned lower Court while holding that the wife is living separately from the respondent-husband without any sufficient cause dismissed the petition. Appreciating the contentions it is squarely accepted even by the counsel for the respondent that the proceedings under Section 125 Cr.P.C. are more of social and welfare in nature with the purpose of ameliorating the cause of dependants which is by way of summary procedure. No doubt, the wife has not been able to establish that the husband was gainfully employed in the Transport Corporation of India as claimed by her or was getting ₹25,000/- per month but it is her categoric stand as has been highlighted by counsel for the petitioner that the wife on account of mental and physical torture was compelled to leave her matrimonial home and since 16.3.2011 she is living separately. The present petition as has been brought to the notice of the Court has been instituted on 22.11.2011 almost after 8 months of this desertion and rather purely on the ground that in a petition under Section 9 of the Hindu Marriage Act wife has taken a stand that she does not want to accompany the husband and that her father PW2 Narender Singh admits in his cross-examination that they want a divorce from respondent-husband has led to the order in question which is a pure illegal lackadaisical approach.

The very opening lines of Section 125 Cr.P.C. makes it clear that if any person having sufficient means neglects or refuses to

maintain his wife unable to maintain herself the Court may upon proof of such neglect or refusal order such person to make a monthly allowance for the maintenance of his wife and under explanation (b) to this Section the term wife includes woman who has been divorced by or has obtained a divorce from **her husband and has not remarried** and, therefore, giving a liberal construction to this explanation it ensures that even where a wife has sought divorce from a husband and, thus, lives separately she is also entitled to maintenance allowance and the proviso thereto ensures that if such a person offers to maintain his wife and she refuses to live with him the Court may consider any grounds of refusal stated by her and if there is just ground for doing so and her refusal may consider the same and, though, which the lower Court failed to appreciate in the right perspective. Section 125 (4) bars a woman who without any sufficient reason refuses to live with the husband who can be denied such an allowance. The fact that as has come in the evidence and has been discussed even by the trial Court that she remained in matrimonial home for 15-16 days after the marriage and that criminal proceedings have been lodged by her regarding dowry shows the magnitude to which the couple relations have soured, rather to the mind of this Court is in itself a sufficient ground for the wife to refuse to accompany the husband when in her application she has categorically taken a stand that it is on account of physical and mental cruelty she has been forced to desert the matrimonial home rather are matters which needs to be given a constructive interpretation in favour of the weaker sex so as to prevent vagrancy and destituteness which are the very back bone of such an enactment.

Learned trial Court on the mere premise that the wife has refused to live with the husband and that she wants divorce from him has jumped to this conclusion. The Courts are supposed to be

sensitive to the human needs and desires and with the advancement of human race the interpretation to this stipulation needs to be made positively else it would be self- defeating. The wife has established on the records her dependency on her parents and without any proof of her earnings it is the bounden duty of the husband to maintain her as per his status. Since there is no documentary proof of the employment and earnings of the husband and assuming as per his own stand that he is a labourer, thus, keeping in view the daily wages notified by the Government which are around ₹160/- it would be sufficient to hold that the respondent-husband must pay a sum of ₹2400/- to the wife as fixed allowance per month from the date of her application.

Thus, the impugned findings are not only perverse and illegal but are retrograde in their approach and, thus, needs to be struck down.

In view of these discussions, the impugned order is set aside by way of acceptance of instant revision.

(FATEH DEEP SINGH)
JUDGE

May 11, 2015
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