

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revn. No. 3275 of 2015

DATE OF DECISION: 04.09.2015

Mohd. Ishfaq

.....Petitioner

Versus

Smt. Shahida and another

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

Present:- Mr. Mohd. Yousaf, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

Briefly, the facts of the case are that respondent-wife and her minor daughter filed an application under Section 125 Cr.P.C. for grant of maintenance on the ground that they were not having means to earn their livelihood, whereas, the petitioner-husband was having sufficient income as he was running a seed store at Gur Mandi, Dhuri and was also doing the business of property dealer. Notice in the application was issued to petitioner-husband and reply to the same was also filed. After hearing the parties as well as their counsel, learned SDJM, Malerkotla vide its order dated 9.1.2014 allowed the application of the respondents and awarded ₹ 2000/- per month as maintenance to respondent-wife and ₹ 1000/- per month to minor daughter from the date of filing of the application. Against the aforesaid order both the petitioner-husband as well as respondents-

wife and minor-daughter filed revision petitions. Petitioner-husband filed revision petition for setting aside the order of grant of maintenance being on the higher side and the same was dismissed. The respondents-wife and her minor-daughter filed revision petition for enhancement of maintenance being on the lower side and the same was allowed by the revisional Court by enhancing the maintenance from ₹ 2000/- per month to ₹ 2500/- per month to the wife and ₹ 1000/- per month to ₹ 2500/- per month to minor daughter vide order dated 6.8.2015.

Aggrieved by aforesaid order dated 6.8.2015 passed by the revisional Court, the petitioner-husband has filed the present revision petition.

Learned counsel for the petitioner contends that the amount of maintenance is on the excessive side as the petitioner-husband is not having any independent source of income as he is only helping his father in running the business. Learned counsel further contends that the respondents have been granted the maintenance by the trial Court and there was no ground for enhancing the same by the revisional Court without availing remedy under Section 127 Cr.P.C. Learned counsel also contends that the trial Court by considering the income of the petitioner to be ₹ 9000/- has awarded the maintenance to the tune of ₹ 3000/- to both the respondents. Nothing was placed on record before the Revisional Court to show that the income of the petitioner was increased or there was a change in the circumstances, which would compel the revisional Court to enhance the amount. It is also the argument of learned counsel for the petitioner that the petitioner is maintaining his father and is paying ₹ 5000/- to him. In addition to that, he has two minor children and second wife to support. The revisional Court by assessing the income of the petitioner-husband between ₹ 12000/- to ₹ 15,000/- has wrongly awarded an amount

of ₹ 5000/- per month to the respondents, which is on the higher side and the same deserves to be set aside. He further submits that the order passed by the trial Court may be upheld. The scope of the revision is very limited and the revisional Court can only interfere in case there is jurisdictional error or the trial Court has exceeded its jurisdiction or has not exercised the jurisdiction vested in it but in spite of that the revisional Court has enhanced the amount of maintenance.

Heard the arguments advanced by learned counsel for the petitioner and have also gone through the orders passed by the SDJM, Malerkotla as well as Additional Sessions Judge, Sangrur.

Admittedly, an amount of ₹ 2000/- and ₹ 1000/- has been awarded to the wife and minor daughter, respectively, by the learned SDJM, Malerkotla vide its order dated 9.1.2014, which was challenged by both the parties by way of filing revision petitions before the revisional Court. However, said revision was dismissed, whereas, the revision petition filed by the respondent-wife and daughter was allowed and amount of maintenance was enhanced to ₹ 2500/- each, which comes to total ₹ 5000/-. Learned counsel for the petitioner has raised various arguments to contend that the enhancement made is contrary to the provisions and there was no change of circumstances. The remedy lies under Section 127 Cr.P.C. The revisional Court was having no jurisdiction to enhance the amount unless the change of circumstances are there.

Section 125 Cr.P.C., which is relevant to decide the controversy in hand, is reproduced as under:-

“125. Order for maintenance of wives, children and parents.(1) If any person leaving sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

A Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate¹[***] as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

²[Provided further that the Magistrate may, during the pendency of the Proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under

the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person]

Explanation. For the purposes of this Chapter.

(a) minor means a person who, under the provisions of the Indian Majority Act, 1975 (9 of 1875) is deemed not to have attained his majority;

(b) "Wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

³[(2) Any Such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.]

(3) If any Person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's ⁴ [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation. If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an ⁴allowance from her husband under this section she is living in adultery, or if, without any sufficient reason, if she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.”

Similarly, Section 127 Cr.P.C. is also relevant for resolving the controversy and the same is also reproduced as under:-

“127. Alteration in allowance.

(1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the

interim maintenance, as the case may be.

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent civil court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that-

(a) the woman has, after the date of such divorce, remarried; cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order-

(i) In the case where such sum was paid before such order, from the date on which such order was made,

(ii) In any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to ² [maintenance or interim maintenance, as the case may be] after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom ³[monthly allowance for the maintenance and interim maintenance or any

of them has been ordered] to be paid under section 125, the civil court shall take into account the sum which has been paid to, or recovered by, such person ⁴[as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of] the said order.”

On perusal of Section 125 Cr.P.C., it is clear that if any person having sufficient means neglects or refuses to maintain his wife, who is unable to maintain herself or his legitimate or even illegitimate minor child, whether married or unmarried, who is unable to maintain itself, is to grant maintenance as determined by learned Magistrate after considering the facts and circumstances of the case. For claiming maintenance, an application is to be moved by the person who is claiming maintenance. Undisputedly, in the present case, the respondent-wife and minor daughter have moved an application under Section 125 Cr.P.C. for grant of maintenance and by considering the reply filed by the petitioner-husband an amount of ₹ 2000/- and ₹ 1000/- was awarded to the respondents, respectively, by the SDJM, Malerkotla. Against the aforesaid order passed by the SDJM, Malerkotla, both the parties have filed revision petitions. The revision petition filed by the petitioner-husband was dismissed, whereas, the revision petition filed by the respondent-wife was allowed and the amount of maintenance was enhanced from ₹ 2000/- to ₹ 2500/- to respondent wife and from ₹ 1000/- to ₹ 2500/- to the minor child.

As per the provisions of Section 127 Cr.P.C., in case there is change in the circumstances of any person receiving the monthly allowance for maintenance under Section 125 Cr.P.C., the Magistrate may alter the amount of maintenance in case it appears to the Magistrate that the changed circumstances are there. The order granting maintenance can be cancelled only in case the woman who has been divorced or has

obtained divorce or has remarried. The provisions of Section 127 Cr.P.C. are not applicable to the case in hand as the amount has not been enhanced by the learned SDJM. In the present case, the amount of maintenance awarded by Magistrate was challenged in the revision petition by keeping in view the income of the husband and the fact that the amount of maintenance was on the lower side. The argument of learned counsel for the petitioner that the power to enhance the maintenance lies only under Section 127 Cr.P.C. does not carry any weight as the amendment is to be made by the Magistrate only but in the present case the amount has been enhanced in the revision petition. It is not a case of changed circumstance but keeping in view the fact that the income of the husband is on the higher side and the interest of the minor child is of paramount consideration and as such the amount of maintenance has been enhanced by the revisional Court.

Moreover, the petitioner-husband has filed revision petition against revision but counsel for the petitioner has not been in a position to show as to how the revision lies against the order passed in the revision.

In view of the facts and law position as explained above, there is no merit in the contentions raised by learned counsel for the petitioner and the petition being devoid of any merit is hereby dismissed.

September 04, 2015
pooja

(DAYA CHAUDHARY)
JUDGE