

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRR-4045-2014 (O&M)
Date of decision:03.11.2015

Pawan Kumar

...Petitioner

Versus

Muskan through her mother

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Sandeep Khunger, Advocate for the petitioner.
Mr.I.S.Saggu, Advocate for the respondent.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned order dated 30.10.2014, passed by the learned Additional Sessions Judge-cum-Judge, Special Court, Chandigarh, whereby appeal of the petitioner was dismissed and the order dated 6.3.2013 passed by the learned Judicial Magistrate 1st Class, thereby allowing the application of the respondent under Section 125 of the Code of Criminal Procedure ('Cr.P.C.' for short), granting maintenance @ Rs.4,000/- per month from the date of application till her marriage was upheld, father of the respondent has approached this Court by way of present criminal revision petition, for setting aside the impugned orders.

Brief facts of the case, as recorded by the learned Additional Sessions Judge in paras 4 and 5 of the impugned judgment, are that Muskan (respondent herein) was a minor girl and residing with her mother, who was looking after and maintaining the respondent. The petitioner is father of the

respondent. The petitioner was working as a Clerk in the office of Principal Secretary, Local Government Department, Civil Secretariat, Punjab at Chandigarh and was drawing handsome salary of Rs.12,000/- per month. The mother of the respondent was also working as Clerk in Chandigarh Police and was drawing salary of Rs.9968/- per month. The mother of the respondent was maintaining and spending a lot of money on her education, clothing, rationing and daily medicine.

The father of the respondent filed a divorce petition against respondent's mother, which was pending in the court of Sh.Ravi Kumar, learned Additional District Judge, Chandigarh. The respondent was studying in Paragon Convent School, Sector 24-B, Chandigarh. The monthly expenditure of the respondent was Rs.1825/- which was being born by her mother. The petitioner never spent single penny on her maintenance as well as on her education since March, 2005, whereas the mother of the respondent was residing in government accommodation and she had to pay licence fee as well as house rent to the government. The respondent had no source of income being minor and she was totally dependent upon her mother. The petitioner had sufficient means of income and had willfully and intentionally refused to maintain the respondent. With these submissions a prayer was made that the petitioner may kindly be directed to pay maintenance to the respondent @ Rs.5000/- per month from the date of filing of application with costs.

Reply to the application was filed by petitioner (father of the respondent). It was submitted that the parents of the respondent were jointly liable to share the expenses of the child in equal shares. The mother of the

respondent did not place on record the documentary proof of the alleged expenses. The petitioner was working in the office of Principal Secretary Local Government as Clerk. However, it was denied that the mother of the respondent was getting Rs.6244/- per month as carry home salary. In fact, the mother of the respondent was getting Rs.10,000/- per month as salary which was just equal to the salary of the petitioner. The petitioner also contributed to the upbringing of the child, as he used to purchase clothing etc. for the child occasionally. The petitioner was always ready and willing to contribute 50% to the monthly expenses of the respondent, being father.

After hearing the learned counsel for both the parties, taking into consideration the evidence led by the parties, the learned trial Court disposed of the petition vide impugned order dated 6.3.2013 and directed the petitioner to pay Rs.4000/- per month to the respondent from the date of the application till her marriage. The amount received by the respondent as interim maintenance allowance was liable to be adjusted. Petitioner filed his appeal against this order which also came to be dismissed by the appellate court vide order dated 30.10.2014. Hence this petition.

Notice of motion was issued.

Learned counsel for the petitioner, while referring to different documents available on record, submits that since mother of the respondent was serving and was having regular source of income, he alone was not responsible to pay entire amount of maintenance for his daughter-respondent (Muskan), who was admittedly living with her mother. He further submits that since the learned courts below have misdirected themselves, while putting entire financial burden on the petitioner alone,

altogether ignoring the material fact that wife of the petitioner and mother of the respondent was also having a regular source of income, the impugned judgments have resulted in miscarriage of justice and the same were not sustainable in law. He prays for setting aside the impugned orders, by allowing the present petition.

On the other hand, learned counsel for the respondent submits that petitioner has no case either on facts or in law. He performed the second marriage without getting divorce from the first wife. If the petitioner can afford to perform the second marriage during the subsistence of his earlier marriage with the mother of the respondent, he cannot be permitted to run away from his social, financial as well as legal responsibility to maintain his ailing and handicapped daughter. He also submits that the learned courts below have considered and appreciated the true facts of the case, while passing the impugned orders and the same were fully justified on facts as well as in law, which deserve to be upheld. He prays for dismissal of the instant petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the peculiar fact situation obtaining in the present case, instant one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its revisional jurisdiction, which itself is a limited one. To say so, reasons are more than one, which are being recorded hereinafter.

A combined reading of both the impugned orders would show

that the learned courts below have considered each and every relevant aspect of the matter, before arriving at their respective judicious conclusions, in support of their impugned orders. The basic facts of the case are not in dispute. The respondent is a minor daughter of the petitioner. Petitioner is serving in the government department. Respondent-daughter was studying in Paragaon Convent School, Chandigarh. Later on, respondent had been studying in Government Model Senior Secondary School, Chandigarh. She was student of 8th class and was staying with her mother. The marriage between the petitioner and his earlier wife Manju Bala had been finally dissolved by a decree of divorce.

Now, the primary question that falls for consideration of this Court is whether an amount of Rs.4,000/- per month granted in favour of the respondent-daughter and directed it to be paid by the petitioner, is on higher side. After giving anxious consideration to the peculiar fact situation of the case, this Court is of the definite view that answer to the above-said question is and has to be an emphatic no.

In these days of sky rocketing prices, an amount of Rs.4,000/- per month would not at all be sufficient for bringing up a school going child. It goes without saying that not only equal but much more amount than Rs.4,000/- per month would have to be spent by the mother of the respondent, for imparting reasonably good education to the daughter. In fact, it seems that petitioner was trying to run away from his responsibility as father, while refusing to maintain his own daughter.

More than one previous orders passed by this Court would show that the petitioner was not paying the arrears of maintenance regularly

and this Court had to pass repeated orders directing him to pay the amount of arrears. It prima facie shows that the petitioner has been trying to avoid his responsibility. Having said that, this Court feels no hesitation to conclude that the learned courts below committed no error of law, while passing their respective impugned orders and the same deserve to be upheld, for this reason also.

During the course of hearing, learned counsel for the petitioner could not point out as to how an amount of Rs.4,000/- per month towards maintenance for the respondent-daughter would be on higher side and rightly so, it being a matter of record. There is no denying the fact that the mother of respondent was also serving in Government Department. In such a situation, the respondent was lucky enough to have an earning mother, failing which their life would have become miserable, because petitioner could not prove himself to be a good husband nor a good father, as disclosed by the narration of the facts of the present case.

It was specifically urged before this Court by the mother of respondent, who came present in the Court, that she had been and will be willingly spending much more amount from her own pocket, in addition to Rs.4,000/- per month, granted by the learned courts below, which was not at all sufficient for maintaining the daughter. She further stated that even if she had to spend Rs.8000-9000/- per month from her pocket, in addition to above-said Rs.4,000/- granted by the courts for the maintenance of her daughter, she would never mind it. However, petitioner has tried to shirk his responsibility, right from day one, which had never been in good taste nor it behoves a father.

Be that as it may, an amount of Rs.4,000/- for maintaining a girl child of about 15 years of age and living in a city like Chandigarh cannot be said to be on higher side, under any circumstances. The impugned orders passed by the learned courts below have not been found to be suffering either from any jurisdictional error or patent illegality. In this view of the matter, the impugned orders deserve to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out

Resultantly, with the above-said observations made, the present petition stands dismissed, however, with no order as to costs.

03.11.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE

