

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

Date of Decision: April 21, 2015.

CRR(F)157-2014 (O&M)

Rajesh AhujaPetitioner.

VERSUS

Lata AhujaRespondent.

AND

CRR(F)235-2014 (O&M)

Lata AhujaPetitioner.

VERSUS

Rajesh AhujaRespondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Mr. Sanjay Jain, Advocate for the petitioner.
(in CRR(F)157-2014).

Mr. Mahavir Sandhu, Advocate for the petitioner.
(in CRR(F)235-2014).

SNEH PRASHAR, J.

By way of this order, CRR(F)157 of 2014 and CRR(F)235 of

2014 shall be disposed of as these cases have been filed challenging the same order dated 26.05.2014 passed by learned District Judge (Family Court), Ambala.

2. A petition under Section 125 of the Code of Criminal Procedure (in short, "Cr.P.C.") claiming maintenance allowance was filed by Lata Ahuja-wife against Rajesh Ahuja-husband. The parties were married on 14.02.1993 at Faridabad and were blessed with three children, one son and twin daughters. Lata Ahuja-wife pleaded that the behaviour of her husband was always harsh and cruel towards her. Although she was employed but on his insistence she left the job to involve herself in homely affairs, yet she often used to be physically assaulted by her husband and ultimately was turned out of the matrimonial home on 28.08.2010 and the children were forcibly retained by her husband. Eversince then she had been residing with her sister at Ambala Cantonment. Submitting that she has no independent source of income whereas her husband Rajesh Ahuja is earning Rs.1,50,000/- per month, she prayed that the respondent-husband be directed to pay her maintenance allowance to the tune of Rs.30,000/- per month.

3. The petition was contested by Rajesh Ahuja-husband (respondent in that petition). He admitted that Lata Ahuja is his legally wedded wife and they have three children born out of the wedlock. The preliminary objection raised by him was that the petition was not maintainable because his wife Lata Ahuja had left the matrimonial home on

her own volition and had eloped with her lover namely, Rajinder Sachdeva during the intervening night of 28/29.08.2010 and was living in adultery with him since then. He mentioned that he had filed a petition for divorce which was pending in the Court of District Judge (Family Court), Faridabad. He denied that he was running business in the name & style of 'Sagar Engineers' at Faridabad or was doing the business of computers under the name & style of 'Sharp Technology'. He pleaded that neither he has any concern with either of the firms nor he is earning Rs.1,50,000/- per month. Alleging that the act and conduct of Lata Ahuja had caused physical and mental trauma to him and his family and also that she had taken away cash amounting to Rs.1,30,000/- and the entire jewellery etc., he prayed for dismissal of the petition.

4. Both the parties adduced evidence in support of their rival contentions.

5. Considering the evidence led by the parties and the submissions made on their behalf, learned Family Court, Ambala directed Rajesh Ahuja-husband to pay maintenance allowance to the tune of Rs.6,000/- per month to Lata Ahuja from the date of the order. Lata Ahuja was also held entitled to the litigation expenses at the rate of Rs.5500/- and accordingly the petition was disposed of.

6. Feeling aggrieved by the order dated 26.05.2014 passed by learned Family Court, Ambala, Rajesh Ahuja filed CRR(F) No.157 of 2014 for setting aside the said order whereas Lata Ahuja filed CRR(F) No.235 of

2014 for enhancement of the maintenance allowance.

7. The submissions made by Mr. Sanjay Jain, learned counsel representing Rajesh Ahuja-husband and Mr. Mahavir Sandhu, learned counsel representing Lata Ahuja-wife have been considered.

8. At the very outset, learned counsel for Rajesh Ahuja-husband argued that in the petition filed by Lata Ahuja-wife, it was not her averment that she was unable to maintain herself or that she had no independent source of income. He also contended that Lata Ahuja was living in adultery. She had intentionally deserted Rajesh Ahuja and eloped with her paramour and was still residing with him. To support his contention, Rajesh Ahuja had examined his brother RW2 B.B. Ahuja, RW3 Constable Upkar and RW4 EHC Anil Kumar and had proved the documents Ex.R2 to Ex.R6 i.e. D.D.R. etc. got registered by him after Lata Ahuja had eloped with her paramour. A divorce petition on the ground of adultery was also filed by him which was pending before the Family Court. Till date no petition under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights had been filed by Lata Ahuja. The petition filed by her claiming custody of the children was dismissed by the court. In the said set of facts, Lata Ahuja is not entitled to claim maintenance from her husband Rajesh Ahuja.

9. On the other hand, learned counsel for Lata Ahuja argued that it was only because of the suspicious nature of Rajesh Ahuja that a marital discord between the parties had cropped up. Since the day Lata Ahuja was turned out of the matrimonial home, she was residing with her sister at

Ambala Cantonment. She had no relationship with any person named Rajinder Sachdeva, named by her husband as her lover. Learned counsel contended with vehemence that it was mentioned in the petition by Lata Ahuja that earlier she was employed but because of insistence of her husband she had left the job. That by itself means that she was left with no independent source of income and while living with her sister she was financially and socially dependent upon her.

10. The main argument of Rajesh Ahuja for holding his wife not entitled to maintenance allowance from him is that she is leading an adulterous life. As per his deposition, his wife Lata Ahuja was having adulterous relationship with Rajinder Sachdeva since 28/29.08.2010. Scrutinizing the ocular and documentary evidence adduced by the parties, the findings of learned trial Court were as under:-

“The respondent, though, relied upon testimony of RW3 Constable Upkar Singh and RW4 EHC Anil Kumar who proved documents Ex.R2 to Ex.R6. According to said documents, the respondent had filed number of complaints with the police levelling the allegations that the petitioner had been residing in adultery with one Rajinder Sachdeva. It is well settled law that mere marking of documents would not make the documents admissible in the evidence. In the case titled as Sait Tarajee Khim Chand and others v. Yelamarti Satyam another, AIR 1971 Supreme Court 1865, it was held that mere marking of document as exhibit does not dispense with its proof. Therefore, the mere fact that the petitioner produced some documents Ex.R2 to Ex.R6, Ex.R8 and Ex.R9, without there being any corroborative piece of evidence, does not dispense with the formal mode of proof enjoined by the provisions of the Indian Evidence Act. In the circumstances, Therefore, the said documents are liable to be ruled out of consideration.

The materials available on record do not establish that

the petitioner was leading an adulterous life with one Rajinder Sachdeva. Moreover, it is settled law that one or more instances of lapses in the character of the wife is not sufficient to absolve the husband from his liability to pay maintenance to her. Rather the case of the petitioner is on better footings as the respondent has failed to establish that the petitioner is leading adulterous life. Further, as held in the case of Smt.Pramila Devi alias Kuni Versus Sanatana Jena, 1989(2) Crimes 288 (Orissa High Court), the unsuccessful bid by the husband to castigate the wife as a person living in adultery entitles her to live separately from her husband and claim maintenance from him. The petitioner is entitled to lead a life of peace and harmony without insult and humiliation. The very allegation by the husband that the petitioner is having extra marital relationship with a person other than her husband is insulting and humiliating enough and in such situation if the wife refuses to remain in her house she cannot be said to have forfeited her right to maintenance.

In the instant case, the petitioner has failed to give a single instance that he had seen the petitioner in the company of one Rajinder Sachdeva in such a compromising position that she was living in adultery with Rajinder Sachdeva. The respondent while appearing in the witness box as RW1 filed his affidavit Ex.RW1/A and simply stated that the petitioner had an extra marital and adulterous relations with one Rajinder Sachdeva, who was the driver in the driving institution under the name and style of Vipul Motor Driving at Faridabad from where the petitioner was learning driving of car and had been living with Rajinder Sachdeva Case No.326 of 2011/2012 Lata Ahuja Vs.Rajesh Ahuja 13 in an adulterous relationship since 28/29.08.2010. In his cross-examination that when he had received the summons of the instant case, the address mentioned in the summons issued to him on the address of the sister of the petitioner. He also admitted that he had filed divorce petition against the petitioner Faridabad after receiving the summons of the present case. He stated that he had seen Lata Ahuja going with Rajinder Sachdeva in the evening of 28th August, 2010 but he did not see her going with Rajinder in the night on the same day. Thus, the respondent himself could not disclose even a single instance of adultery of the petitioner. The admission of the respondent that he filed petition seeking dissolution of his marriage with the petitioner after he received summons of the present case itself clearly shows that in order to evade his responsibility to pay maintenance to the petitioner, the respondent filed petition for

divorce and that too on the serious grounds of adultery.”

11. Learned counsel for Rajesh Ahuja failed to demonstrate any illegality or perversity in the findings of learned trial Court arising out of misappreciation or misreading of the evidence led by the parties. It may be the allegation of Rajesh Ahuja that his wife Lata Ahuja is living in adultery and on that ground he may have filed a petition for dissolution of their marriage but the said petition is still pending and so far no Court has given a verdict accepting his allegation. Under Section 125 Cr.P.C., a wife unable to maintain herself is entitled to claim maintenance from her husband when despite having sufficient means he neglects or refuses to maintain her.

It has been held by Hon'ble Apex Court in ***Chaturbhuj Vs. Sita Bai 2008(1) Civil Court Cases 100 (Supreme Court)*** that Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children. It has been further held that the object is to prevent vagrancy and destitution and a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves.

12. Admittedly, Lata Ahuja is residing separate from her husband. She deposed that she was turned out of the matrimonial home during the night intervening 28/29.08.2010 and since then she is residing with her sister. Her contention that she was employed in Postal Department but on the insistence of her husband Rajesh Ahuja had left the job, was not denied

by Rajesh Ahuja, though he stated that she left the job of her own. It was not his contention that thereafter Lata Ahuja had ever taken up any job or was having any independent source of income or that she owned any movable or immovable property. In view of the aforesaid facts and circumstances, in my considered opinion, the order of learned District Judge, Family Court, that Lata Ahuja is entitled to maintenance from her husband Rajesh Ahuja calls for no intervention and is upheld.

13. Coming to the quantum of maintenance, Lata Ahuja pleaded that Rajesh Ahuja is earning more than Rs.1,50,000/- per month by running business in the name & style of 'Sagar Engineers' at Faridabad and 'Sharp Technology' at Delhi. Rajesh Ahuja denied that he had any concern with the said firms. However, it was observed by learned Family Court in para no.30 of her judgment that from the cross-examination of RW1 Rajesh Ahuja and RW2 B.B. Ahuja, it is clear that they belong to a business family. It was also proved that 'Sagar Engineers' is being run by both the brothers and 'Sharp Technology' is being run by Rajesh Ahuja. The monthly income of Rajesh Ahuja was assessed as Rs.35000/- to Rs.40,000/-.

14. It is a settled proposition of law that the wife is entitled to a financial status equivalent to that of the husband. No doubt, Rajesh Ahuja is taking care and bearing all expenses of the three children born out of the wedlock of the parties but he being the earning member of the family is legally bound to do so. For that reason, he can also not be absolved of his liability to maintain his wife who is also dependent upon him.

Thus, considering the income and financial status of Rajesh Ahuja, in my considered view, the amount of Rs.6,000/- per month allowed as maintenance allowance to Lata Ahuja is not on the higher side. Accordingly while the petition bearing CRR(F) No.157 of 2014 filed by Rajesh Ahuja for setting aside the said order dated 26.05.2014 is dismissed, the petition bearing CRR(F) No.235 of 2014 filed by Lata Ahuja for enhancement of the maintenance allowance is also dismissed.

(SNEH PRASHAR)
JUDGE

April 21, 2015
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