

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

CRR(F) No.40 of 2014 (O&M)
Date of decision: 15th December, 2015

Kanika Gaud and another

... Petitioners

Versus

Mohan Joshi

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Ram Bilas Gupta, Advocate
for the petitioners.

Mr. P.S. Jammu, Advocate
for the respondent.

FATEH DEEP SINGH, J.

In this revision, challenge has been laid by the wife and the minor son to the findings of the learned District Judge, Family Court, Faridabad wherein application under Section 125 Cr.P.C. for grant of maintenance allowance has been allowed by awarding ₹2,500 per month in favour of the wife and ₹1,500 per month in favour of the son, in all totaling to ₹4,000 per month.

After hearing at length Mr. Ram Bilas Gupta, Advocate for the petitioners; Mr. P.S. Jammu, Advocate for the respondent and perusing the case file.

The stand of the husband shows, he admits the marriage having been solemnized on 27.04.2009 and birth of the minor child out of this relationship. The claim of the wife is that the husband is working as a Software Engineer in M/s Oracle Company, Noida getting salary of ₹50,000 per month which has now been enhanced to ₹95,000 per month after joining M/s Oracle India Pvt. Ltd. at Bangalore and thus, has sought to challenge the order over meagerness of the maintenance allowance so awarded.

The couple is at loggerheads and which has led to the matrimonial dispute, whereby the wife has also filed a criminal case. Though the husband has not been able to sufficiently rebut his qualification and earnings and rather has raked up a plea that the wife was qualified and working as a Teacher. The wife has examined herself as PW1 and has testified that she was MA, JBT and that her father has died and she has not applied for any job and is totally dependent on her widowed mother and has denied the allegations of the husband that she was gainfully employed. Similarly, her mother Sarita PW2 has corroborated her stand and through PW3 Abhilash Supervisor of the St. Marry Senior Secondary School has proved fee receipts Ex.P1 and Ex.P2 of the child which is @ ₹930 per month.

The husband on the other hand has testified as RW1 and though has tried to get out of the imbroglio but in his cross-examination has admitted that he was an Engineer working in Oracle Company at Hyderabad getting salary of ₹25,000 to ₹30,000 per month and rather RW2 B.D. Joshi, father of the husband, has claimed

that though his son was an Engineer and was running a business at Hyderabad.

Contentions of learned counsel for the petitioners that it is the obligation and duty of the husband to maintain the wife and minor child unless or until there is tangible evidence to show to the satisfaction of the Court that it was the wife who has voluntarily without any reasonable cause has left the company of the husband and which is not established in this case.

Learned lower Court though has taken this avocation and earnings of the husband but has failed to take a realistic approach keeping in view that the child is a school-going boy, the wife needs shelter as well as money to maintain herself and the minor kid, and in the light of proposition of law, as has been sought to be impressed upon by the learned counsel for the petitioners, which could not be refuted by the respondent's counsel that the husband is supposed to maintain his wife and the child commensurate with his social and economic standing. Being a social enactment to ensure prevention to vagrancy and destituteness to the dependents, it is the bounden duty of the Court to have evaluated realistically keeping in view this un-rebutted evidence and own admission of the husband about his avocation and earnings, though the Court below has fallen into an error by awarding such a meager amount as maintenance allowance.

Keeping in view totality of evidence and the fact that the husband has failed to show that the wife was gainfully employed and therefore, considering the same, it would sub-serve the ends of justice

if the wife is awarded ₹6,000 per month as maintenance and keeping in view that the child needs special diet to grow up, adequate money for his education and other needs he is awarded ₹4,000 per month as maintenance, from the date of filing of application under Section 125 Cr.P.C. In the light of this discussion, the instant revision petition is allowed and the impugned order is modified to this effect.

The petition stands disposed off as such.

(FATEH DEEP SINGH)
JUDGE

December 15, 2015

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