

THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

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Criminal Revision No.749 of 2015
Decided on : 02.03.2015

Sanjeev Kumar Sharma

... Petitioner

Versus

Mrs.Anita Sharma

... Respondent

CORAM : HON'BLE MR.JUSTICE HARI PAL VERMA

Present : Mr.Tara Chand Dhanwal, Advocate
for the petitioner.

Hari Pal Verma, J.

The petitioner-husband has filed the present revision petition against the judgment/order dated 09.06.2014 passed by learned *Additional Sessions Judge-cum-Judge Special Court, Chandigarh* whereby the trial court has directed the petitioner to pay a sum of Rs.6,000/- per month as maintenance from the date of order dated 09.06.2014. The trial court has further directed the petitioner to arrange two bed room accommodation for the respondent-wife on rent or give an amount equal to rental accommodation. However, on their respective appeals filed by both the parties against the order dated 09.06.2014; the appeal filed by the respondent-wife, Anita Sharma was allowed and the order dated 09.06.2014 was modified to the extent, directing the petitioner to pay a sum of Rs.6000/- per month as maintenance to the respondent from the date of filing of the application i.e. 29.01.2008, whereas in the appeal filed by the petitioner-husband against the order dated 09.06.2014, the order of the trial court was also modified to the extent that maintenance granted under Section 125

Cr.P.C. is not to be set off qua the son.

Briefly stated, Anita Sharma-respondent-wife (hereunder referred to as 'respondent'), has filed application under Sections 12, 17, 18, 19, 20, 22, 23 of ***Protection of Women From Domestic Violence Act, 2005*** (hereinafter referred to as the 'Act') against the petitioner-husband. Marriage was solemnized on 28.06.1993 and a male child was born out of the wedlock on 30.06.1994. After marriage, the parties resided together at H.No.305, Sector 46-A, Chandigarh. The sisters of petitioner harassed the respondent. The respondent was employed at Punjab Wireless, Mohali, but it was wound up under the Company Act and she got more than Rs.60,000/- as PF. Out of this amount, the petitioner purchased the vehicle van. The petitioner was allotted govt. accommodation bearing House No.580, Sector 22-A, Chandigarh and the respondent was compelled to shift in this quarter from 1998 onwards. The said accommodation was got cancelled on 28.12.2007. However, in the month of December, 2007, the respondent was made to believe that she would be shifted to House No.305, Sector 46-A, Chandigarh, but she was told to live in the house of the respondent's mother at House No.1849, Randhawa Road, Kharar. The respondent requested the petitioner to settle her in their house but the petitioner flatly refused to do so. Accordingly, a complaint under the said Act was filed.

The petitioner has filed reply to the said application wherein the petitioner alleged that the respondent has not approached the court with clean hands. After the marriage, the parties cohabited together as husband and wife at House No.305, Sector 46-A, Chandigarh. The

petitioner has made certain allegations about the character of the respondent. The petitioner has filed a divorce petition on 03.04.1995 against the respondent and on filing of this petition, the respondent lodged a false FIR No.125, dated 06.07.1995 under Sections 498A/406 IPC against the petitioner. The said criminal case was compromised and the parties started residing together at House No.2121-A, Sector 24-C, Chandigarh. Again differences arose between the parties. The trial Court decided the complaint filed under the Domestic Act, and observed that the petitioner has failed to maintain the respondent despite having sufficient means. Petitioner has neglected the respondent and refused to maintain her. The trial court in its judgment dated 09.06.2014 has concluded as under:-

“In view of the above discussion, it is held that keeping in view, the bare necessities of life, needs of the petitioner, earning capacity of the respondent and his retiral benefits keeping in view of the fact that he is the able-bodied person, the standard of life which the parties were enjoying in the matrimonial house, their commitments and all surrounding circumstances, this court is of the considered view that it will be in the fitness of things if the respondent is directed to pay a sum of Rs.6000/- per month as maintenance to the petitioner from the date of this order. The respondent is further directed to give her two bedrooms accommodation to the applicant on rent or an amount equal to rental accommodation. However, this amount of maintenance may be set off against any amount of maintenance being paid by the respondent to the petitioner in any other litigation pending between the parties. Respondent is given one month time to make the payment of all the due

maintenance amount and thereafter, payment be made before 10th of each month. File be consigned to records, after due compliance.”

Against the judgment dated 09.06.2014, both husband and wife filed their respective appeals under Section 29 of the Act. The respondent has filed appeal against order dated 09.06.2014 to the extent that the monthly allowances granted to her from the date of passing of the order dated 09.06.2014 and not from the date of filing of the application i.e. 29.01.2008. Further, the trial court should have ordered the petitioner to buy a small flat in the name of respondent No.2 i.e. son. On the other hand, petitioner has also filed an appeal against order dated 09.06.2014. The trial Court has illegally ordered the petitioner to pay Rs.6,000/- per month as maintenance and directed him to provide two bedroom accommodation on rent or an amount equal to rental accommodation. It is pleaded that trial court has not taken into consideration the character of the respondent. The learned Additional District Judge-cum-Judge Special Court, Chandigarh, vide order dated 09.01.2015 dismissed the appeal of the petitioner and modified the order in the appeal filed by the respondent and observed as under:-

Consequent to the aforesaid discussion, the appeal filed by the applicant, Anita Sharma is allowed and the impugned order, dated 9.6.2014 passed by Trial Court is modified to the extent that the respondent is directed to pay a sum of Rs.6,000/- per month as maintenance to the applicant from the date of filing the application i.e. 29.1.2008. The impugned order dated 9.6.2014 passed by the trial Court is also modified to that the maintenance granted under Section 125 Cr.P.C. is not to be set off qua the applicant No.2 (son). Further the order of the Trial Court is modified to the extent that the respondent is directed to provide two room accommodation on rent or to give an amount of Rs.4,000/- per month for rental accommodation. However, the appeal filed by

the respondent Sanjeev Kumar stands dismissed. A copy of this order be placed in the connected appeal titled as "Sanjeev Kumar Sharma Vs. Mrs. Anita Sharma". Trial Court record along with a copy of this order be returned. File be consigned to record room."

Aggrieved against the aforesaid orders, the petitioner has filed the present revision petition.

Learned counsel for the petitioner has argued that the respondent has filed a false criminal complaint bearing No.3339, dated 04.02.2008 titled as "Mrs.Anita Sharma Vs. Sanjeev Kumar" and the trial Court has wrongly directed the petitioner to pay a sum of Rs.6000/- per month as maintenance to the respondent from the date of filing of the application i.e. 29.01.2008. Further direction giving two bedroom accommodation to the respondent on rent or an amount equal to rental accommodation is also unwarranted. It is contended that the learned courts below while awarding the maintenance to the respondent have not taken into consideration the fact that the respondent has already claimed maintenance under Section 125 Cr.P.C. wherein the Judicial Magistrate, 1st Class vide its order dated 13.05.2014 has granted maintenance to the tune of Rs.3000/- in favour of the respondent-wife and further maintenance of Rs.2000/- per month to the son. Learned courts below have not taken into consideration the order dated 13.05.2014 passed by Judicial Magistrate, 1st Class, Chandigarh while fixing the maintenance in the present case.

Learned counsel has argued that the learned courts below have not considered the documents produced by the petitioner, rather the documents furnished by the respondent have wrongly been considered. He contended that the petitioner has taken voluntary

retirement and got Rs.8.70 lacs as retiral benefits and was getting pension at the rate of Rs.13,698/-.

I have heard learned counsel for the petitioner, and perused the record.

The petitioner has not produced any evidence that the respondent has any source of income, whereas, the petitioner is having sufficient means to maintain the respondent. It is legitimate obligation of the petitioner to maintain his wife and son. As observed by the trial court, the respondent being wife of the petitioner is entitled for suitable accommodation to live alongwith her son. This part of judgment of trial court was further modified by the learned Appellate Court to provide two rooms accommodation or to give an amount of Rs.4000/- per month for rental accommodation. Moreover, the petitioner has sought voluntary retirement on 01.08.2012 which sufficiently shows that he has sufficient means to maintain her wife and son. Therefore, I find no illegality in the orders passed by the courts below. Moreover, the scope of any interference in the revisional jurisdiction is very limited. There is no irregularity or illegality in the orders passed by the courts below which warrants any interference.

Accordingly, I find no merit in the present revision petition and the same is dismissed.

[Hari Pal Verma]
Judge

02.03.2015
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