IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR(F) No.32 of 2015 (O&M)
Date of Decision: 13 May, 2015

Vipul Jain ... Petitioner

Versus

Smt. Ritu Jain and ors. ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vikas Kumar, Advocate
for the petitioner.

Mr. Sanjay Kapoor, Advocate
for the respondents.

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RAJ MOHAN SINGH, J.

1. This is a revision petition filed by the husband against order dated 07.01.2015 passed by District Judge Family Court, Faridabad in the petition under Section 125 Cr.P.C.

2. Respondent No.1 was married to the petitioner on 26.11.2001 according to Hindu rites and ceremonies at Faridabad. Two children namely Tanvi and Moksh took birth on 27.10.2003 and 09.02.2005 respectively. Presently the respondent No.1 along with childrens is living in the flat at Faridabad. Due to matrimonial dispute, parties could not pull on well, resulting in filing of petition under Section 125 Cr.P.C as well as divorce petition. Appeal filed against judgment and decree of family Court is pending in High Court at the instance of husband. For the purposes of deciding, present revision petition background of matrimonial discord is not to be mentioned in detail. Family Court vide order dated 08.12.2011 granted interim maintenance of Rs.5000/- per month each in favour of the three persons i.e wife and both

minor children from the date of filing of the application.

3. The applicant wife and minor children adduced evidence for the purpose of grant of maintenance. Petitioner/husband also adduced oral as well as documentary evidence viz electricity bills, school fees, stationery slips of children and charges towards maintenance of society etc. The petitioner adduced income tax return for the year 2012-13 (Exhibit RW-1) and for the year 2013-14 (Exhibit RW-2). Though the total turn over of the company was Rs.12 crores, but the profit after deduction has been shown around Rs. 6-7 lacs per annum. The factory set up by the petitioner is claimed to be in gestation, demanding an investment with no profit. The petitioner claims himself to be a partner to the extent of 50 per cent in the factory. Petitioner also claims that maintenance awarded by the Family Court to the tune of Rs.1 lac for all the three claimant is very exorbitant and is on the higher side. The petitioner while appearing as RW-2 has stated that in the year 2009 he was earning a monthly salary of Rs.90,000/-. Thereafter in the year 2010, he started his own business. Now he is running two businesses i.e one is industry and another is a consultancy. The annual turn over of industry is Rs. 12 crores and is a partnership concern. The profit earnings of the company is stated to be around Rs. 6-7 lacs per annum. The factory set up by the petitioner is under the name and style of Macro Auto Tech. The income tax return for the year 2012-13 (Exhibit RW-1) and for the year 2013-14 (Exhibit RW-2) were got exhibited in the statement of RW-1 which were duly objected to for mode of proof. Despite that, execution of these documents have not been proved on record by the petitioner.

4. Learned counsel for the petitioner stated that the income and profit generated from the businesses have been duly audited and accepted by the competent authority. The total income generated by the company and relevant

deductions are subject matter of audit and therefore nothing more beyond the official record can be presumed on conjectures.

5. Learned counsel for the petitioner stated that the flat in which respondents are living, belongs to him. They are living freely as against possible rental of Rs.30,000/- per month, loan instalments against the flat are being paid by the petitioner. Petitioner was shunted out from the flat and he has also paid arrears of interim maintenance. The petitioner also stressed upon the concealment made by respondent No.1. She was taking cookery class and was earning from it. By referring to income tax returns, learned counsel states that for the purposes of granting maintenance, the income from the company cannot be presumed to be beyond Rs. 6 to 7 lacs per annum and from consultancy it is between Rs. 1 to 4 lacs annually. Grant of one lac as maintenance is pleaded to be totally unreasonable and is on higher side.

6. The statement dated 11.12.2014 recorded by the Family court is relevant to be quoted here as under:

> *"RW-1 Sh. Vipul Jain son of Sh. Subhash Jain R/o house No.373, Sector-14 Faridabad. On SA*
>
> *I tender in evidence my duly sworn affidavit Ex. TW1/A which may be read into evidence as my statement. I also tender in evidence documents Ex.RW1 and Ex.RW2 (both exhibits object to for mode of proof)*
>
> *XXXXXX by Sh. Sanjay Kapoor, Adv. for the petitioner.*
>
> *Deferred at the request of counsel for the petitioner."*

7. In cross-examination of the petitioner as RW-1, the petitioner has mentioned that his wife has a source of income, but he has no proof regarding the income of his wife at the moment, but he can produce the same. The witness has admitted that his salary in 2010 was Rs. 90,000/- but thereafter he started his own business. He was running two businesses, one is industry and

another is consultancy. The annual turn over of the industry is claimed to be Rs.12 crores which is partnership concern, the profit is claimed to be around Rs. 6 to 7 lacs per annum. The income of the consultancy is stated to be varying from Rs. 1 lac to 4 lacs per annum. The witness also admitted that he was maintaining a Verna Hyundai car. So far as maintenance of Cruze car is concerned, his answer was negative. The monthly personal expenses are stated to Rs.10,000-15000/-.

8. Learned counsel for the respondents drew attention of the Court towards list of interest of car loans as per documents Exhibit P-4 at page No.115 of the paper book i.e. income tax return along with supporting documents filed by the petitioner in which interest of car loan Cruze to the tune of Rs. 39,860/-, interest of car loan Fortuner Rs. 1,08,554/-, interest of Maxmo loan Rs. 126.73, totally Rs. 1,54,540.73/- are shown. Apparently petitioner is maintaining aforesaid luxury cars and is enjoying status of reputed businessmen. Again as per Annexure P-4 at page 109 of the paper book, the capital account of the petitioner as on 31.03.2013 shows capital addition to the tune of Rs.50,34,413.70/-. The aforesaid data is suggestive of the fact that the capital earned by the petitioner is in circulation. Again the petitioner has admitted in his cross-examination that he has no proof of income of her wife except statement made by him. In view of proof of execution of income tax return, the total turnover of the company to the tune of Rs.11 to 12 crores cannot be brought down to annual profit of Rs.6 to 7 lacs only. The petitioner seems to be concealing some material facts. The status of the petitioner seems to be of reputed businessmen who is enjoying luxury cars like Cruze, Fortuner, Maxmo and has recirculated huge amount approximately Rs.50 lacs in the business. Therefore the amount awarded by Family court is claimed to be justified.

9. I have considered rival arguments of both sides.

It is a settled principle of law that wife is entitled to be maintained in the same way as she was at the place of her husband before matrimonial discord. The wife is also entitled to maintain standard of living which is neither luxuries nor penurious, but is consistent with the status of the family. The aforesaid idea is not to allow the wife to make it profitable business so as to create impediment for prospective return to matrimonial house. The law laid down in ***Bhagwan Vs. Kamla Devi, (AIR 1975 SC 83)*** and the principles highlighted by the Hon'ble Supreme Court in ***Chaturbhuj Vs. Sita Bai, 2008 (1) RCR(Criminal)163*** have been consistently followed thereafter.

10. Inability of the wife to earn cannot disentitle her for claiming maintenance from her husband. Impression "unable to maintain herself" does not mean that the wife must be absolutely destitute before seeking maintenance under Section 125 Cr.P.C. In ***AIR 1978 Supreme Court 1807 Captain Ramesh Chander Kaushal Vs. Mrs. Veena Kaushal,*** the object of granting maintenance was highlighted by the Apex Court which was to prevent vagrancy under Section 125 Cr.P.C as a measure of social justice and is specifically enacted to protect women and children and to prevent them from the vagrancy and destitution. The position was further highlighted in ***Savitaben Somabhai Bhatiya Vs. State of Gujrat, 2005 (2) RCR (Criminal) 190.***

11. ***In Sita Devi @ Sita Verma Vs. Vijay B Verma, 2014 (1) (Civil) 1018,***this Court vide order dated 11.12.2013 enhanced maintenance to the tune of Rs.1.50 lacs per month according to financial status of the husband from interim maintenance of Rs.31,000/- per month. In the said case gross income of the husband was found to be Rs.19,84,559/- and the income tax return showed it close to over Rs. 30 lacs per month.

12. In such a situation, for the purposes of grant of maintenance under

Section 125 Cr.P.C., the Court has considered the status of the parties, their respective needs, the capacity of the husband to pay having regard to his self expenses and of those he obliged under the law and statutory but involuntary payments or deduction. The maintenance as a measure of social justice falls within the constitutional sweep of Article 15(3) which was reinforced by Article 39 of the Constitution of India. It means to achieve a social purpose and the object is to prevent vagrancy and destitution and to provide a speedy remedy for the supply of food, clothing and shelter to the deserted wife and it gives effect to fundamental rights and natural duties of men to maintain his wife and children.

13. In view of aforesaid, no attending circumstances have come to fore to take any other view except to uphold the order passed by District Judge Family Court.

Consequently, this revision petition is dismissed.

(RAJ MOHAN SINGH)
JUDGE

13 May, 2015
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