

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-(F) No.54 of 2015 (O&M)
Date of Decision: 13.03.2015

Ajay Kumar

...Petitioner

Versus

Veena Devi and another.

...Respondent

CORAM: HON'BLE MR.JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

Present: Mr. Jitender Malik, Advocate
for the petitioner.

R.P. Nagrath, J.

The instant revision has been filed seeking to set aside the order dated 10.2.2015 passed by the District Judge, Family Courts, Hisar whereby the petition under Section 125 Cr.P.C. filed by respondent awarding the maintenance amount @ ₹ 5,000/- per month to respondent No.1-wife and ₹ 3,000/- per month to respondent No.2-minor child to take effect from the date of institution of the application, has been allowed.

The marriage of petitioner with respondent No.1 was solemnised on 05.12.2007 and a male child-respondent No.2 was born out of the wed lock on 04.11.2008. It was stated that the parents of respondent No.1 spent about ₹ 13 lacs in the marriage.

Soon after the marriage, in-laws of respondent No.1-wife started treating her with cruelty for pressurising her to bring more dowry. She was initially turned out of the matrimonial home on 15.8.2008 but came back to the matrimonial home after about four months by meeting certain demands. She was again turned out of the matrimonial home in December, 2010 by giving her beating. A panchayat was convened on 01.05.2011 and another amount of ₹ 25,000/- was allegedly paid, but again she was turned out of the matrimonial home in December, 2011. So this is how respondent No.1 was being treated according to her story.

Application for grant of maintenance under Section 125 Cr.P.C. was filed on 24.04.2012. The petitioner contested the application and made counter allegations that respondent No.1 is a hot tempered lady and used to insult him in the presence of family members. Even a complaint under section 498-A, 406, 323 IPC was filed against petitioner and his family members. The allegation of demand of dowry are denied.

The respondents claimed maintenance @ ₹ 10,000/- per month. The petitioner on the other hand stated in reply that respondent No.1-wife is in fact an educated lady and working as a teacher in Krishan Parnami School, Adampur and getting ₹ 8,000/- per month as salary. Besides that she was imparting private tuitions and earning ₹ 5,000/- per month. The petitioner, however, admitted that he was working as a constable in the Hayana Police, but denied that he was having agricultural land. He is the only earning member

of the family and has to maintain old parents as well.

Both the parties produced their respective evidence and learned Family Court accepted the plea that petitioner refused and neglected to maintain the respondents. The version of respondent No.1 was testified by respondent No.1 herself as PW1 in her affidavit Ex.PW1/A. On the other hand, there is an affidavit of petitioner himself as Ex. RW1/A to rebut the case of the respondent No.1-wife.

It was not possible while analysing the evidence to disbelieve respondent No.1-wife in her version with regard to neglect or refusal to be maintained by petitioner-husband. There is no scope of saying that petitioner was not at fault in the absence of any other supporting evidence about the cruel attitude of his wife.

On the quantum of maintenance, there is a bald statement of petitioner as RW1 that his wife is earning hand but no record of the school where respondent No.1-wife was teaching, is produced on the file. Learned counsel was also unable to suggest anything from the statement appearing in the cross-examination of respondent No.1-wife for supporting the above contention of income of the wife.

It has been positively held by learned Family Court that gross salary of petitioner as per salary details Ex. P-1 was ₹ 32,509/- with carry home salary of ₹ 24,111/-. Learned counsel for the petitioner, however, referred to the salary details Annexure P-3 (colly) suggesting that carry home salary of petitioner was ₹ 16,025/-

for the month of May, 2012. His gross salary was ₹ 20,862/- and an amount of ₹ 4837/- was towards deduction which included GPF deduction of ₹ 2,000/- per month. The salary for the month of January, 2013 was ₹ 19,523/- and carry home salary was ₹ 14,543/-. For the month of February, 2014, carry home salary was ₹ 23,896/- with gross salary of ₹ 30,291/- per month. This amount of ₹ 23,896/- as carry home salary has been arrived at by reducing the gross salary with income tax deduction of ₹ 2370/-. Obviously this is the salary for the month of February, 2014 payable in the month of March, 2014 and at the end of the year, income tax is deducted and that is why the petitioner knowingly attached the salary details of March, 2014. Keeping in view the aforesaid fact, the assessment of the maintenance amount by the learned Family Court seems to be rather on the lower side.

The other contention of the learned counsel was that the Family Court has directed the maintenance amount to take effect from the date of application, though normally it should be from the date of order.

There is no such principle of law for holding that the maintenance allowance would be payable with effect from the date of order. Rather it should be normally from the date of application because the assessment is made on the basis of evidence led in the case. At the time of interim maintenance even the salary certificate may not have been attached. Anyhow, if the carry home salary for the month of May, 2012 was ₹ 16,025/- i.e. for the month soon after

the filing of the petition, the award of ₹ 8,000/- per month for both the respondents from the date of filing the application is not on the higher side as there was regular increase in the salary thereafter. The maintenance allowance has to be paid according to the status of the family where the respondents had been residing after the marriage.

Learned counsel for the petitioner, however, submitted that in a petition under the Protection of Women from Domestic Violence Act, 2005 (for short to be referred as the 2005 Act) the Court of Judicial Magistrate has directed the payment of ₹ 3,000/- per month to the wife and ₹ 1,000/- to the minor child vide order dated 17.10.2013 (Annexure P-1). The learned Magistrate has taken due care of the aforesaid fact as the learned lower Court in the concluding paragraphs has clearly observed that the amount of interim maintenance allowance paid and being received by the respondents as per the aforesaid order of learned Magistrate passed under Section 12 of the 2005 Act would be adjustable towards the amount of maintenance awarded to them in the present proceedings.

I find no merit in the instant petition and the same is dismissed.

13.03.2015
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(R.P. Nagrath)
Judge