

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

**CR No.5042 of 2016
Decided on: 08.08.2016**

Narinder Dang

....Petitioner

Versus

Divya @ Manmeet Kaur

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Brijender Kaushik, Advocate
for the petitioner.

REKHA MITTAL, J.

The present petition lays challenge to order dated 07.05.2016 (Annexure P-4) whereby Divya @ Manmeet Kaur and two minor daughters of the parties have been allowed maintenance @ Rs.3,000/- per month each from the date of filing of application under Section 24 of the Hindu Marriage Act, 1955 (in short 'the Act').

Counsel for the petitioner would contend that the respondent – wife filed an application under Section 125 of the Criminal Procedure Code claiming maintenance but she was not awarded any maintenance in those proceedings. The petitioner is already paying maintenance @ Rs.8,000/- per month in the proceedings under the Protection of Women from Domestic Violence Act, 2005 (in short 'the Act of 2005'). It is further submitted that the respondent is running a beauty parlour and has sufficient income to maintain herself and minor daughters of the parties. It is further argued that there is no evidence on record with regard to income of the petitioner and thus, a huge liability to pay an amount of Rs.9,000/- per month to the

respondent and the children has been wrongly fastened upon him.

I have heard counsel for the petitioner and perused the paperbook particularly the order impugned.

The petitioner has filed the petition under Section 13 of the Act for dissolution of marriage on the ground of cruelty including levelling allegations *qua* extramarital affair of the respondent – wife with a person. It is an undisputed position of the case that the respondent – wife along with two minor daughters of the parties is staying away from the matrimonial home. As per the allegations in the application for maintenance, the respondent is carrying on a business of hardware under the name and style of Dang Paint Store and has some rental income. Counsel for the petitioner has not stated clearly as to what business is being carried on by the petitioner and further about his income. However, it has been stated in para 18 that the petitioner is HIV positive, living at the mercy of others and has to spend money for medicines, etc. There is no medical evidence on record that either the petitioner has been found to be HIV positive or due to this condition, he has been rendered unable to work and earn livelihood for his family. The petitioner being the husband of Divya and father of two minor children has a legal obligation to provide adequate maintenance. The maintenance allowed may not be sufficient to satisfy requirement of two square meals for the three what to talk of meeting expenses on education and other needs of the children much less comforts.

In view of the above, I do not find any reason to interfere in the impugned order whereby the respondent and the children have

been allowed maintenance @ Rs.3,000/- each per month. However, the petitioner would be at liberty to seek necessary clarification if maintenance payable under the Act of 2005 is liable to be adjusted out of maintenance assessed under section 24 of the Act.

In view of what has been discussed hereinabove, the petition fails and is accordingly dismissed. Nothing stated in this order shall cause prejudice to either of the parties at the time of final disposal of the petition.

08.08.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No