

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 6467 of 2014

Date of Decision: 14.03.2016

Karamjit Kaur

... Petitioner(s)

Versus

Mandeep Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Karan Nehra, Advocate
for the petitioner(s).

Mr. Gaurav Saini, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present petition under Article 227 of the Constitution to modify order dated 22.5.2014 passed by learned Additional District Judge, Sangrur with a direction to enhance the maintenance allowance payable to the petitioner and her minor daughter at the rate of ₹ 20,000/- per month and to pay additionally ₹ 50,000/- for litigation expenses.

Taking the case from undisputed facts that respondent Mandeep Singh had filed main petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act") seeking divorce. Petitioner-wife filed an application under Section 24 of the Act for grant of maintenance pendente lite on the ground that husband is

serving in defence and getting salary of more than ₹ 35,000/- per month and he is liable to maintain the applicant and her minor daughter. He is also owner of the agricultural land. In the reply, non-applicant/husband *inter alia* pleaded that applicant-wife herself has moveable as well as immovable property; having sufficient source of income; denied the fact that his salary is ₹ 35,000/- per month and he was co-sharer with his father in the land. He prayed that application be dismissed. Plea was taken that his total salary was ₹ 21,149/- per month and net payable salary was ₹ 10,779/- after making statutory deductions.

On these facts, the Court below passed the order for maintenance allowance at the rate of ₹ 3,000/- per month to the applicant-wife and another sum of ₹ 2,000/- per month to minor daughter from the date of application along with ₹ 5,000/- as litigation expenses.

Petitioner being aggrieved of the passing of the said order, challenged the same and sought modification so as to enhance the maintenance allowance.

Learned counsel for the petitioner-husband mainly submitted that the Court below has not awarded reasonable amount of maintenance as respondent is getting salary of ₹ 21,149/- per month. More so, salary is likely to be enhanced after revision of pay scale on the basis of recommendations of Seventh Pay Commission. Learned counsel for the petitioner also submitted that salary of the respondent has also increased during the intervening period of three years of

litigation but the Court below has completely ignored this fact and as such the order, under challenge, be modified and petitioner be given reasonable amount of maintenance. In support of his contentions, learned counsel for the petitioner has placed reliance upon the judgments rendered by the Co-ordinate Benches of this Court in ***Ashu alias Asha and Another v. Sunil Kumar (Criminal Revision No. 1969 of 2011, decided on 10.2.2015)*** and ***Yash Pal v. Kaushal Rani and Another (Regular Second Appeal No. 949 of 2008, decided on 22.9.2011)***.

While arguing on this point, learned counsel for the respondent took a plea that the Court below has already passed order for maintenance allowance at the rate of ₹ 5,000/- per month (₹ 3,000/- for wife plus ₹ 2,000/- for minor daughter), whereas respondent-husband is getting salary of ₹ 10,779/- per month only. So the present petition be dismissed.

Having considered the submissions made by learned counsel for the parties and taking the case from the admitted facts, this Court is of the considered view that relationship *inter se* parties is not disputed and respondent as husband is legally and morally bound to maintain his legally wedded wife and minor daughter. However, as regard to maintenance allowance to be paid to the wife, earning capacity of the husband is to be taken into consideration. As per salary certificate available on the file of the Court below, salary of respondent-husband is ₹ 10,779/-, out of which he has been ordered to make payment of ₹ 5,000/- (₹ 3,000/- for wife plus ₹ 2,000/- for minor

daughter) in all. The remaining amount is certainly required by the husband for his survival also. As regard to the plea taken by learned counsel for the petitioner that Seventh Pay Commission has already recommended the revision of pay scale, so higher amount of maintenance allowance be ordered, such a plea is legally not tenable because there is a long distance between recommendation of the Pay Commission and the receipt of actual salary by the respondent-husband. Needless to mention that in the changed circumstances, petitioner-wife may be able to file an application for enhancement of maintenance allowance, if any. But at any rate, petitioner-wife and her minor daughter have been paid reasonable amount of maintenance allowance by the Court below keeping in view the earnings of the respondent-husband. There are no grounds to set aside the impugned order and for modification of the same.

This Court has also considered the view taken by the Coordinate Benches of this Court in ***Asha alias Ashu's case***(*supra*) and ***Yash Pal's case*** (*supra*) and of the view that the facts of the case in hand are entirely distinguishable because in this case the Court below has taken into consideration the income of the respondent-husband and passed the order for maintenance allowance accordingly.

In view of above, present petition, being devoid of any merit, stands dismissed.

(Shekher Dhawan)
Judge

March 14, 2016

"DK"