

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

**Crl. Misc. No.M-33576 of 2013(O&M)
Date of decision : 20.09.2016**

Narender @ Kala

... Petitioner

versus

Sunita

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

- 1.Whether Reporters of local papers may be allowed to see the judgment?
Yes/No
- 2.To be referred to the Reporters or not? Yes/No
- 3.Whether the judgment should be reported in the digest? Yes/No

**Argued by: Dr. Praveen Hans, Advocate
for the petitioner.**

**Mr. Vivek Khatri, Advocate
for the respondent.**

ANITA CHAUDHRY, J.

Through the instant petition, the husband has laid challenge to the order dated 15.12.2012 passed by the Judicial Magistrate Ist Class, Hansi on the application filed by the respondent under Section 12 of the Protection of the Women from Domestic Violence Act, 2005. He has been directed to pay a compensation of Rs.1 lac to the respondent, out of which half of the amount was ordered to be deposited for the benefit of the child Rinku. He has also been directed to pay Rs.4000/- per month as maintenance to wife and the child from the date of filing of the application and also to provide residential accommodation to the wife and the child. In the alternative to pay rent for it from the date of passing of the order. The

petitioner has further questioned the legality and propriety of the order dated 03.08.2013 passed by the Addl. Sessions Judge, Hisar vide which his appeal against the order dated 15.12.2012 was dismissed.

The facts of the case first, the marriage of petitioner was solemnized with the respondent on 30.06.1996. A son was born on 14.04.1997, whose paternity has been disputed by the petitioner. A petition under Section 12 of the Act was filed by the wife alleging therein that she and her son were unable to maintain themselves. She claimed compensation, a protection order, residency order and maintenance from the husband. It was claimed that the husband was running a furniture shop besides his engagement in agricultural pursuits.

The claim was resisted by the husband on the ground that the wife had willfully deserted him and that she was a lady of easy virtue. He even denied the birth of a son from his loins and claimed that the marriage was never consummated. It was averred that in other litigation., the wife was not granted any relief by the court. He denied the responsibility of the wife and the child. It was claimed that the wife was working in Anganwari and getting Rs.3000/- as salary, besides getting Rs.750/- as pension from the Government.

At the trial, Sunita stepped into the witness box as PW1 besides examining her father Satbir as PW2.

Narender himself appeared as RW1 and examined Shamsheer Singh and Veerbhan, the co-villagers as RW2 and 3

respectively. Shamsheer Singh Assistant was also examined as RW4.

On appraisal of evidence on record, learned Magistrate disposed of the application. The Appellate Court though dismissed the appeal of the husband, but clarified that the amount of Rs.1200/- which was ordered to be paid to the wife in proceedings under Section 125 Cr.P.C. shall be adjusted in the amount of Rs.4000/- which was granted as maintenance to the wife.

Dis-satisfied with the same, the instant petition has been preferred by the husband.

I have heard learned counsel for the parties and have gone through the file carefully.

As per certificate, Annexure P-4, the date of birth of Rinku was 14.04.1997 and by the time he has attained majority and is not legally entitled to claim any maintenance after he attains majority.

The petitioner has denied the claim of the respondent primarily on two grounds, firstly, the wife herself had left his company and secondly that she was not a woman of integrity. He denied the paternity of the child.

The petitioner had adverted on the chastity of the respondent. But no evidence was produced to substantiate his plea. RW2 Shamsheer and RW3 Veerbhhan, his co-villagers were examined by the husband who deposed that Rinku was not born from the loins of Narendra. But the oral statements of both these

witnesses are of little value. PW3 Veerbhan stated that he do not know Sunita and thus, his version was only hearsay. The petitioner did not make any attempt to get his DNA examination. The petitioner did not file a divorce petition on the plea of adultery. It is a matter of prudence that with such a baseless and unproved allegation on her chastity, it was impossible for the wife to live with the husband. It appears from the record that in the year 2004 the wife withdrew the maintenance petition as well as criminal complaint in a bid to restore her married life. It has come in her statement that she was again turned out of the house and since then she was residing with her aged father. The Court below was justified in granting compensation. The respondent is living separately since 2004. The petitioner had levelled allegations on the character of the wife, which he had failed to prove. It does not appeal to prudence that a woman had been living separately from her husband without any reasonable cause. Thus, there is no reason to interfere with the direction of the Courts below to provide residential accommodation to the wife or to pay rent thereof.

Acquittal of the petitioner and his family members in dowry demand case is no ground to deny maintenance to the wife and the child. The petitioner cannot be absolved of his liability to maintain the wife and the child on this score. The case in hand is required to be decided on the preponderance of probabilities and no strict standard of proof is required to be proved.

Coming to the income aspect, it is apparent that no proof regarding income of the petitioner was brought on record by the wife. Merely the oral assertion that the husband is running a furniture shop besides carrying out agricultural pursuits, no evidence was produced on record by the wife. In absence of any cogent and convincing evidence led by the parties on the income aspect, it can only be determined on hypothesis. The petitioner had admitted that he owned four acres of land and earning Rs.20,000/- per annum therefrom and he is maintaining his aged and ailing mother. There is no dispute that he is carpenter by profession and must be earning from his profession. The petitioner-husband had brought on record the information provided under the Right to Information Act, Annexure R-8 to show that the wife is getting pension from the Department of Social Justice and Empowerment, Haryana to the tune of Rs.750/- per month. As per Annexure P-5 attached with this petition, the amount of pension has been enhanced to Rs.1400/- per month. Sunita while appearing in the witness-box admitted that she is working as Cook with Anganwari Department and getting Rs.500/- per month.

In the circumstances, the amount of Rs.4000/- per month from the date of application awarded as maintenance to the wife and child seems to be just and reasonable.

As noticed above, the child had attained majority and his date of birth is 14.04.1997. He is not entitled to any maintenance from the petitioner from May 2015 onwards. The

amount of Rs.1200/- was ordered to be paid to the wife and the child in 125 Cr.P.C. petition vide order dated 10.08.2009 and the appellate Court vide impugned order 03.08.2013 ordered for adjustment of that amount of maintenance awarded to the wife and the child in the instant proceedings. The adjustment shall be of the amount of maintenance payable from the date of filing of application under the D.V. Act. Therefore, after deducting half share of the child in the maintenance amount, the share of maintenance of the respondent individually comes to Rs.1400/- per month (Rs.2000/- being half share awarded in instant proceedings minus Rs.600/- i.e. half share of maintenance in 125 proceedings).

Vide order dated 21.10.2013, compensation amount to the tune of Rs.50,000/- was stayed. Amount of maintenance, if any paid in excess to the child or the wife, shall be adjusted from the amount of compensation and the remaining shall be deposited within three months.

With the aforesaid observations, the instant petition stands dismissed.

September 20,2016

Jiten

**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No