

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

**Crl. Misc. No. M-35096 of 2014**

**Date of decision : 05.04.2016**

Nisha and another

... Petitioner

versus

Kehar Singh

... Respondent

**CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY**

Present: Mr. J.S. Rozera, Advocate  
for the petitioner

Mr. S.K. Panwar, Advocate  
for the respondent

**ANITA CHAUDHRY, J. (ORAL)**

This petition under Section 482 Cr.P.C. has been filed challenging the judgment dated 12.04.2014 passed by the Additional Sessions Judge, Palwal.

A petition under Section 125 Cr.P.C. was filed by Nisha and her minor daughter. The trial Court found that there was no evidence to show the income. Treating the husband to be a casual labourer, taking the income to be Rs.6000/- per month, it awarded maintenance of Rs. 2000/- per month to petitioner No.1 and Rs. 1500/- to petitioner No. 2.

The order was not challenged by the wife. However, the husband filed a revision. The Revisional Court modified the order and set aside the order so far as the award of maintenance to the wife is concerned. The order of maintenance to the child was affirmed.

I have heard both the sides.

Learned counsel for the petitioner has urged that the Revisional

Court took note of the fact that a petition under Section 9 of the Hindu

Marriage Act had been filed which was allowed and it was the wife who did not join the matrimonial home, therefore, she was not entitled to the maintenance. It was urged that the Revisional Court overlooked the fact that the girl was tortured and she was not allowed to meet anybody and she was kept under lock and key and the parents had approached the Magistrate and warrants under Section 97 Cr.P.C. were issued and the petitioner was got released. It was urged that the husband owns one acre of agricultural land and had income from agriculture but they were unable to lay hands on the papers. It was urged that it was an ex-parte order passed by the Family Court in Uttar Pradesh and coming to know of it an application had been filed by the wife for setting aside the ex-parte order and the matter was still pending.

Learned counsel for the respondent had urged that the main petition was fixed for final arguments before the trial Court and the trial Court would adjudicate if any maintenance has to be awarded and the petition be dismissed. It was urged that the Revisional Court had noted that the wife had not joined the matrimonial home despite a decree of restitution of conjugal rights and she was not entitled to any maintenance.

So far as the enhancement is concerned, the order of the trial Magistrate was not assailed, therefore, it became final and the petitioner can not in these proceedings assail them or seek a higher amount.

The Revisional Court had wrongly disallowed maintenance to the wife. It took note of the ex-parte decree passed in the petition for restitution of conjugal rights which was produced for the first time. Before the Lower Court the respondent had only produced the order vide which the wife was proceeded ex-parte.

The petition under Section 9 of the Hindu Marriage Act was filed in Uttar Pradesh. The wife on coming to know of the proceedings had filed

an application for setting aside the decree, the matter is still pending.

The trial Court had noted that warrants under Section 97 Cr.P.C. had been issued and the wife was got released. The Revisional Court failed to take notice of the entire facts.

The petition is partly allowed. The order passed by the Magistrate is restored. The Revisional Court order stands modified.

**(ANITA CHAUDHARY)**  
**JUDGE**

**April 05, 2016**

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