

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

Crl. Misc. No.M-39977 of 2013 (O&M)

Date of Decision: 10.08.2016

Surjit Kaur

.. Petitioner

Vs.

Gurnam Singh

.. Respondents

Whether Reporters of local papers may be allowed to see the judgment? Yes/No

To be referred to the Reporters or not? Yes/No

Whether the judgment should be reported in the digest? Yes/No

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by:- Ms. Bhupinder Kaur, Advocate
for the petitioner.**

**Mr. R.S. Longia, Advocate
for the respondent.**

ANITA CHAUDHRY, J.

The petitioner is seeking quashing of order dated 20.08.2013 passed by the learned Sessions Judge, Ludhiana by virtue of which the appeal filed by the respondent-husband against the order dated 30.01.2013 passed by the Magistrate fixing the maintenance of petitioner-wife @ Rs.1000/- per month, has been set aside and the petition filed under Section 125 Cr.P.C. has been dismissed. The petitioner is also seeking enhancement of maintenance amount to Rs.2000/- per month.

The petitioner was married to respondent in the year 1951 and out of the wedlock six children were born. The wife filed the petition under Section 125 Cr.P.C. in the year 2007 claiming that she had been deserted by the husband since 1986 and she is living with her son Sukhwinder Singh. It

was claimed that the husband had retired from the Army and getting Rs.5000/- per month as pension. Maintenance to the tune of Rs.2000/- per month was sought.

The respondent-husband contested the petition. The relationship and separation was admitted. It was claimed that the wife was living separately for no reasonable cause and had left the company of the husband when he was bed ridden due to a fractured leg. It was averred that he is getting Rs.300/- per month as pension from Army from where he retired on 01.02.1946.

On the basis of evidence led by the parties, the trial Court came to the conclusion that the respondent is getting Rs.1000/- as pension from Army besides he was having Rs.1,05,000/- in his bank account and fetching interest thereupon. The Court directed the respondent to pay a sum of Rs.1000/- per month to the wife from the date of application.

The respondent-husband filed a revision. The revisional Court by dint of order dated 20.08.2013 allowed the revision and dismissed the petition filed by the wife.

Dis-satisfied with it, the instant petition has been filed by the wife.

It is apparent that the wife had left the company of the husband without any reasonable cause. Though, she claimed separation since 1986, but she claimed maintenance in the year 2007. Both the parties are old and aged. The respondent-husband is now in his late eighties and it has come on record that he had no sufficient funds even to maintain himself. The wife had been residing with her son for over a decade. These facts were taken into consideration by the revisional Court while dismissing the petition for

maintenance. The relevant findings returned by the revisional Court are discernible from perusal of Para 10 to 12 of the impugned order, which read as under:-

“10. In the petition, the wife has asserted that she was maltreated in 1986, therefore, she has been living separately from her husband since 1986. The husband has asserted on the other hand that he had fractured his leg in July, 2004 and therefore, instead of looking after him and serving him, the wife deserted him without any reasonable cause. When the wife entered the witness box as PW4 she conceded that she had been living separately from her husband since 2004 only. It is not her case that she was maltreated in 2004 and hence, she started living separately. Understandably, in the above said manner, she has conceded that the husband's version that the wife deserted him in July 2004 without any reasonable cause is true. In other words, it has been proved on file that the wife has been living away from her husband without any reasonable cause. Section 125 Cr.P.C. lays down that in such a case wife is not entitled to maintenance. The above said aspect of the matter has completely escaped the notice of learned Trial Magistrate.

11. There is still another reason for declining the petition of the wife. The wife is entitled to seek maintenance allowance only where she is unable to maintain herself. If she is to be believed, then she has been living separately from her husband and with her son, since 1986. The present petition was filed in 2007. That way, it is understandable that the wife was being able to maintain herself for a long period of 21 years. She does not explain as to how she lost her source of income suddenly after a long period of 21 years. In the

absence of such an explanation, it is assumed that the wife is not unable to maintain herself.

12. Section 125 Cr.P.C. makes the husband liable only if he has sufficient means and then neglects his wife. As stated earlier, the husband has not neglected his wife. Further more, the learned Magistrate has observed that the husband earns about Rs.1800/- per month. Since, the husband is already 85 years of age, therefore, understandably, he needs medicines for his own well being. Hence, the said amount is not sufficient to even maintain the husband. In other words, it is obvious that the husband does not have sufficient means to maintain his wife.

There is no infirmity in the findings returned by the revisional Court, which are based on correct appreciation of law and facts.

The petition is dismissed.

August 10,2016
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(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No