

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Revision No. 1732 of 2012

Date of decision : 11.03.2016

Satyander

..... Petitioner

versus

Munni Devi

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the digest?

**Present: Mr. Tapan Kumar Yadav, Advocate
for the petitioner**

**Mr. N.S. Shekhawat, Advocate
for the respondent**

ANITA CHAUDHRY, J.

This revision is directed against the order dated 16.1.2011 passed by Chief Judicial Magistrate, Rewari.

Few facts are essential for disposal of the petition.

Munni Devi was married to Satyander in 1998. They have two children out of the wedlock. A complaint under the Domestic Violence Act was filed in June 2010 against the husband, father-in-law, mother-in-law, younger brother of the husband and his wife. The complainant had alleged that her husband was having illicit relations with Poonam Devi of Rajasthan and the husband used to go Jaipur to meet her. She had also mentioned that they had two children and the elder child was taken away forcibly and was with the husband. It was also mentioned that she was turned out of the house on 13.06.2009 and she lived in village Bisoha till March 2010. It was pleaded that threats were given to her and there was a demand of money.

She had mentioned that on 18.05.2010 when she had gone for her duty,

Satyander took the elder son with him. The complainant wanted maintenance for herself and residence in the three storeyed house owned by her husband. She had also pleaded that she wanted to live with the husband and wanted to settle with him and did not want any police action. She sought custody of the elder child if he was not admitted in the hostel.

During the proceedings an attempt was made by the Court to enable the mother to meet the child. The child was produced but he refused to accompany the mother.

Respondent No. 1 in his reply took the plea of maintainability and concealment of material facts. It was pleaded that he was living separately from his family since 1999 and there was no harassment or humiliation or cruelty and his elder son was residing with him and was in the hostel and he was bearing the expenses. It was pleaded that the house situated at Dharuhera was rented out and he was living in a separate room at his parental home in village Bisoha. It was pleaded that the son had told him that he did want to live or study in village Bisoha as his mother used to beat him and, therefore, he had brought him back. It was denied that the complainant's father had paid for Maruti Car. It was pleaded that the car was purchased from CSD canteen in the name of the father of the complainant but the amount was paid from his account and it was encashed in May 2001. The details were also given. It was denied that any amount had been given by the father of the petitioner for the plot situated in Sector 6, Dharuhera. It was pleaded that the complainant left village Bisoha in March 2010 without his knowledge. It was pleaded that he was called to the SP office but no compromise could be effected and false allegations had been levelled.

Both sides led evidence. The complainant summoned the record from HUDA Rewari to prove the re-allotment letter and the possession certificate in favour of Satyander. He had stated that original allottee was

Chanan Singh and the land was allotted in 1990 and Satyandar had purchased it in July 2002.

The complainant stepped into the witness box and reiterated the same facts as given in her complaint. Besides this, the petitioner had examined the Protection Officer and Assistant in the office of P&G Gillette India Ltd. Bhiwani who brought the service record of Satyander and the salary certificate Ex. CW 4/A to show that Satyander was earning Rs. 13986/- per month.

The respondent examined two of tenants in defence to show that they were in occupation of three storeyed house. The respondent examined himself as RW-2 and reiterated the case set out in his reply.

The trial Court without adverting to the monthly expenses of the wife or the husband awarded Rs. 8000/- per month as maintenance. Directions were given to the husband to hand over the vacant possession of the first floor of the house to the wife. Respondents No. 2 to 5 were restrained from interfering in the life of the petitioner.

Aggrieved with the order, an appeal was preferred by the husband. The order was modified and the maintenance was reduced to Rs. 6000/-. The appeal was partly allowed.

I have heard both the sides.

The submission on behalf of the petitioner was that both the Courts below without even examining the evidence had ordered payment of Rs. 8000/- per month as maintenance when the take home salary of the husband was Rs. 9501/-. It was urged that the house in Sector 6, Dharuhera was the self acquired property and the loan was taken from Oriental Bank and the property had been hypothecated and the petitioner was paying loan. It was urged that the husband had taken loan for construction as well and was unable to pay the amount. It was urged that

the property was rented out and the tenants have been produced in the witness box and he could not hand over the possession of the property. It was urged that the husband had led evidence to show that the amount was being deducted from his saving account and copy of the pass book had been placed on record. It was urged that wife left the matrimonial home without any reason and the elder son did not want to stay in the village and, therefore, he brought him back and he was studying in a good school and in a hostel. It was urged that the petitioner was working with Gillette India Ltd. and the wife had never lived in village Bisoha and never stayed in Dharuhera and that was the matrimonial home and the house in Dharuhera was not shared household nor any order could have been made for handing over its possession nor it was possible for him to give the possession as it was in occupation of the tenants.

The submission on the other hand was that the revision was not maintainable and Section 29 of the Domestic Violence Act was final and it only provides for appeal. It was urged that the wife was ready to go and stay with the husband even in the ancestral home. It was urged that the order passed by the Appellate Court was not revisable. It was also contended that house was constructed with the money received by the respondent from her parents.

The dispute in the present case relates to the amount of maintenance payable by the husband and the order regarding possession when the property is in possession of the tenants. Admittedly, the property was purchased by the husband in 2002.

The husband is working with Gillette India Ltd. His salary certificate was produced by MP Gosain, CW4/A. He stated that the net salary was Rs. 13,986/- per month and there was deduction of Rs. 4485/-. The take home salary was Rs. 9501/- The deduction was on account of

Provident Fund, Voluntary Provident Fund and towards Cafeteria. The Chief Judicial Magistrate allowed Rs. 8000/- per month as maintenance besides making a residence order. The wife is educated. She holds a degree of M.A. and B.Ed. She was working as teacher. There is an admission regarding this in the complaint though she changed her statement in the Court.

In the cross examination the complainant had stated that she had taught in a school for three years but intentionally did not give any other details. The elder child of the couple is with the father. He is in the hostel.

Considering the entirety, I am of the view that the maintenance was definitely on the higher side. The wife has not disclosed the information relating to her employment. She did not disclose the name of the school where she had taught. One child is with the mother. The husband is also duty bound to provide a place to stay. The complaint and the evidence is silent with respect to the age of the child with the mother. Therefore, Rs. 2500/- per month would be sufficient for the child. As the property had been rented out, the possession of the same can not be handed over, therefore, some amount should be allowed for residence which I assess at Rs. 2000/- per month. The wife is not entitled to any maintenance.

So far as maintainability of the revision is concerned Section 29 of the Domestic Violence Act does not place any restriction. The order passed by Magistrate can be challenged in appeal. The order passed by the Sessions Court is revisable under Section 397 read with Section 401 Cr.P.C.

The petition is partly allowed.

March 11, 2016

**(ANITA CHAUDHRY)
JUDGE**

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