

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CRR No.11(F) of 2013 (O&M)
Date of Decision: 28.01.2016**

Rajesh Kumar

...Petitioner

Versus

Piyush and another

...Respondents

with

CRR No.843 of 2013 (O&M)

Piyush and another

...Petitioners

Versus

Rajesh Kumar

...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? No

Present: Mr. J.S. Cooner, Advocate
for the petitioner in CRR(F)-11-2013 &
for the respondent in CRR-843-2013.

Mr. Chander Shekhar, Advocate
for the respondents in CRR(F)-11-2013 &
for the petitioners in CRR-843-2013.

ANITA CHAUDHRY, J.

1. These are two revisions assailing the order passed
by the District Judge, Family Court, Ambala dated

30.11.2012, one filed by the father, Rajesh Kumar and the other by his minor children. The Family Court, Ambala allowed Rs.10,000/- per month as maintenance to both the minor children. The father is seeking modification in the amount as the awarded amount is exorbitant. The children are seeking enhancement.

2. Rajesh was married to Dipti on 11.12.2006. They had two children, a son and a daughter. The mother works as a Lecturer in Agra. The father is posted as a Constable with Delhi Police. The Children are with the grand parents at Ambala. That is the reason why the petition was filed at Ambala. The children were minor, therefore, the petition was filed through the mother. Levelling allegations of demand of dowry, it was pleaded that the husband kept her (mother) without food and used to beat her. It was pleaded that she was thrown out of the matrimonial house on 05.10.2007 and the husband refused to keep or maintain her. Both the petitioners are twins and were born on 25.06.2008. The petitioners claimed that the husband was earning Rs.30,000/- per month and had additional income from immovable property. A claim of Rs.15,000/- per month was made. The petition was filed in 2010.

3. The husband on the other hand had pleaded that his wife had left the matrimonial home and had abandoned his company. It was pleaded that she was professionally qualified

and was M.A in English and had done her B.Ed. and was an Lecturer in Ghaziabad (U.P.) and was earning Rs.30,000/- per month. It was pleaded that his carry home salary was Rs.11,000/- per month. It was pleaded that the wife had never discharged her matrimonial duties and she could not adjust in his family and demanded separate accommodation and her father threatened to implicate him in false cases and she was in habit of going on frequent hunger strikes when her demands were not fulfilled. It was pleaded that he had never beaten his wife and she had created false stories of being thrown out of her matrimonial home and she herself did not ever want to be a mother and had taken medicine from a chemist shop which created complications and she was later admitted in hospital. It was denied that he was getting Rs.30,000/- per month as salary.

4. By way of evidence, Dipti gave her affidavit and disclosed that she was drawing Rs.9,200/- per month. She had also stated that she was working since October, 2009 but was on contract basis. She admitted that she was M.A. in English and had cleared her B.Ed. and was working as a Teacher in Kasturba Gandhi Balika Vidhyalya but added that she was on contract basis. She had examined her father, Bhudev Sharma working in the Agriculture Department.

5. Rajesh stepped into the witness box as PW-1 and gave his affidavit PW1/A. He stated that he owned no land

and the land was in the name of his father and his family was a joint family. He stated that he had taken personal loan and his carry home salary was Rs.12,000/- per month, though his total salary was Rs.18,000/- per month. He admitted that the children were born in the house of maternal grand-father and even now they were residing with them.

6. The Family Court, after assessing the evidence noted that the total salary of the respondent-father was Rs.23,367/- per month and he was contributing Rs.10,000/- per month towards the GPF and he had increased the deposit and the carry home salary was Rs.12,000/- per month. It had noted that the deposits were made so as to show that the take home salary was less. The Family Court granted Rs.5,000/- per month to each of the children from the date of the order.

7. Aggrieved with the order, Rajesh has filed this revision (CRR(F)-11-2013) and had pleaded that the Court below did not consider the fact that he had to maintain himself, his parents and younger brother and the maintenance allowed was highly excessive. It was pleaded that he had to pay the loan installments. It was pleaded that the wife had also filed a petition under Section 125 Cr.P.C. concealing the fact that she was working and that petition was dismissed on 30.11.2012 and sole motive was to harass him.

8. On the other hand, the minor children claimed enhancement pleading that they were living with the grand-parents and all the expenses were being borne by them and they required special attention and they had started going to school in 2011 and Rs.2,000/- per month was spent as school fees besides the other expenditure on books, uniform etc. it was pleaded that the husband had been allotted a government accommodation which he had rented out and he was staying with his brother. It was pleaded that his father was also in Delhi Police and a pensioner and had no liability and they were entitled to maintenance from the date of filing of the application.

9. Both sides have been heard, the record has been perused.

10. The children were admittedly born in 2008. They are residing with the grand parents. The mother is a Lecturer and working in Agra (Uttar Pradesh). She is now a regular Teacher. The petition under Section 125 Cr.P.C. was filed in 2010 when the children were only two years old. It is claimed that they started going to school in 2011. A perusal of the record shows that the husband had taken a loan much prior to the dispute. The loan was sanctioned in April, 2008 and the loan was being discharged even in 2012. The basic salary of Rajesh in 2011 was Rs.9,490/- per month and the carry home salary, after deduction was Rs.13,000/- per month. The

husband is paying Rs.3,500/- per month towards loan from 2008 onwards. The mother is working and has left the children with her parents. No document was produced to show that the children had started going to school in 2011 or that they were depositing Rs.2,000/- per month as school fees for each child. Since both the parents are working, it is the responsibility of both the parents to shoulder the liability of the children. The Court below had rightly noted that the husband was depositing a higher amount towards GPF with a view to show that his take home salary was less. No evidence was led by the petitioners to show the amount being spent on the children. The Court had allowed maintenance on pure guess work. The amount that was allowed to each child was certainly on the higher side.

11. A contention had been raised that the salary of the father had increased with time. We, at the present stage are concerned with the income he was earning in 2010 as prayer is for maintenance from the date of petition. The petitioner had introduced only the salary certificate pertaining to the year 2011 in evidence. The children are claiming maintenance from 2010. The record reveals that one salary slip of April, 2010 and the basic salary is Rs.8,800/- per month. The total salary is a little over Rs.18,000/- per month. The take home salary is Rs.11,524/- per month. The Family Court has not recorded any reasons for denying maintenance from the date

of the petition. Thus considering the income of April, 2010 and the fact that the children were only a little over two years, the maintenance of Rs.2,800/- each would be just and sufficient it would be payable from date of filing of the petition. No enhancement can be given.

12. Both the petitions are disposed of with the above modifications. The amount which has been paid/deposited shall be adjusted.

(ANITA CHAUDHRY)
JUDGE

28.01.2016

'Sunil'