IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revision No.2376 of 2015 (O&M)
Date of Decision: 03.02.2016

Virender Singh

...Petitioner

Versus

Santosh Verma

...Respondents

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? No

Present: Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Teevar Sharma, Advocate
for the petitioner.

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

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ANITA CHAUDHRY, J.

1. The petitioner in this petition seeks quashing of the order dated 21.02.2015, passed by the Magistrate and the order dated 06.06.2015, passed by the Additional Sessions Judge, Faridabad. The trial Magistrate had allowed Rs.80,000/- per month as maintenance to the respondent. Aggrieved with the order passed by both the Courts below, challenge has been laid to them.

2. The factual matrix is required to be exposited. The parties got married in 1992. No child was born to them. The brother's son was adopted. Some years later, the couple was blessed with a son. The adopted son is major. The younger

child is 15 years old. The wife left the matrimonial home after 21 years of marriage and is now living with her father who is a pensioner. Admittedly, the husband is working with J.K. Tyres Ltd. The wife had pleaded that the husband had additional income from the company SVS Facilities Pvt. Ltd., whose turn over was in crores and had an income of Rs.30 lacs per annum from J.K. Tyres. The trial Court after assessing the material that was placed before it, observed that there was an admission on behalf of the husband that he was earning Rs.22 lacs per annum and directed him to pay Rs.80,000/- per month to the wife and the minor child from the date of filing of the petition.

3. The husband carried an appeal pleading that the wife was a Director in SVS Facilities Pvt. Ltd. and she used to get income of Rs.5,000/- per month but as the business was running into losses, she had retired and he also had resigned and salary in his hand was Rs.40,000/- per month, after deductions. He had explained that he was discharging loans and had to maintain his ailing mother and adopted son and was not in a position to pay the huge amount allowed by the Courts below. It was pleaded that he had never admitted that his income to be Rs.22 lacs per annum. The appeal was dismissed by the Additional Sessions Judge on 06.06.2015.

4. Aggrieved with the orders passed against him, this revision has been filed by the husband. It was pleaded that the wife and the family members used to humiliate him and

had levelled allegations that he was into a relationship with a woman and was wrongly accused of desertion and withdrawal from society. It was pleaded that the wife was incapable of producing a child because of her physical incapability and she was suffering from diseases prior to marriage and therefore, they had adopted the elder brother's son. It was pleaded that he was not capable of paying the maintenance allowance allowed by the Court below and did not own a house or a car. It was pleaded that a plot of 200 square yards was purchased in the name of the wife at Jaipur. It was pleaded that the salary certificate of May, 2015 would show that his basic salary was Rs.1,14,100/- per month out of which he had to pay an installment of Rs.30,000/- per month for home loan of Rs.24,30,000/- taken by the petitioner and respondent jointly from State Bank of India. It was pleaded that he was also paying installment of Rs.17,500/- per month for the loan of Rs.5 lacs obtained from Central Bank of India in 2012. It was pleaded that he was also paying installments of Rs.27,704/- per month for the loan obtained from Kotak Mahindra Bank Ltd. to the tune of Rs.10 lacs. It was pleaded that these loans were taken to invest in the firm M/s. SVS Pvt. Ltd. to overcome the losses. It was pleaded that he was also paying over Rs.47,000/- per annum as premium for the insurance policy/medical policy for the family as well as for the respondent.

5. The respondent filed reply to the petition and responded to the additional information supplied by the petitioner. It was pleaded that the petitioner had not cleared the arrears which were to the tune of Rs.11,58,000/- and he should not be heard on merits. It was pleaded that the husband was living in adultery and had taken a house on rent in Triveni Apartments in Jhilmil Colony. She had also produced some photographs, copy of the rent agreement, tenant verification report and the statement made by Suman Yadav to the police. It was pleaded that the petitioner was paying money to her but had no money for his family. It was pleaded that the petitioner was getting more amount deducted just to deprive them. In para no.5 of the reply, details of the amounts received along with salary were also given. The respondent had also appended the salary slips and the income-tax returns. It was pleaded that petitioner was having an extra marital affair and was living with adultery in a rented house at Delhi and initially they were living in Ramprastha Colony in Gazhiabad and thereafter, in a rented house in Triveni Apartments, situated in Jhilmil Colony, Delhi. The respondent had placed some photographs, copy of the rent agreement executed by the petitioner with Tirlok Jain, owner of the apartment in Jhilmil Colony to show that rent of Rs.14,500/- per month was being paid.

6. I have heard counsel for both the parties.

7. Initiating the submissions, counsel for the petitioner has urged that both the Courts below had allowed maintenance of Rs.80,000/- per month and the petitioner was working with J.K. Papers Ltd. The counsel had referred to the pay slip of May, 2015 (Annexure P-2) and had urged that the net salary which came in the hand of the petitioner was Rs.1,14,100/-. It was urged that the petitioner had taken loans much prior to the dispute and was paying installments and after paying the monthly installments of three loans and premiums for the insurance policies, the income in hand was only Rs.40,000/- per month. It was urged that he was paying the school fees of the child and the petitioner had no income from the business as the company was closed. The counsel has referred to para no.8 of his petition. It was urged that he was ready to transfer the company in favour of the wife. It was urged that he was ready to keep the wife but the father has mis-guided the respondent. It was urged that a property in the joint name of the petitioner and the respondent was taken which was at Jaipur and he needs money to maintain his ailing mother and adopted son. The counsel has referred to the Annexures appended along with the petition to support the submissions with respect to the loans and the amounts paid for the insurance policies. Specific reference was made to Annexure P-8 to show that an application had been moved for closing the company and it was urged that the wife made a complaint Annexure P-9 against closure.

8. Responding to the submissions the counsel appearing for the respondent urges that the petition was not maintainable and refers to ***Shalu Ahuja Vs. Prashant Ahuja, 2015(1) SCC (Criminal) 1286***. Reference was made to para nos.26 and 27 of the judgment. It was contended that the interim maintenance had been allowed in May, 2014 and if the amount is calculated, it would come to Rs.16 lacs. It was urged that the Court had no jurisdiction and the petition under Section 482 Cr.P.C. would not be maintainable and assuming that the order was revisable then the petitioner has to show that there was some irregularity or illegality and the order was perverse. It was urged that petition has been filed on behalf of the wife and the son who was a minor and the parents of the husband are pensioners and the adopted son is major and is working. The counsel has referred to the statement of account (Annexure R-11) from page nos.185 to 206 and urged that he had made an abstract and the amount which was credited and the amount which was withdrawn from April, 2014 to March, 2015 will show that the petitioner as Director of M/s. SVS Facilities has a turn over touching two crores and the cash withdrawal is over Rs.58 lacs and a wrong claim is being made that the company has closed down. It was urged that the petitioner was living with another woman and a complaint was given by one of the neighbour and the police had recorded the statement of Suman which they have appended with their reply. It was urged that a vehicle has

been provided to the lady and the rent is being paid by the petitioner and he has no amount for the wife and child. It was urged that the respondent has resigned from the company long ago and she was not in a position to run a company nor she was interested in the house over which there was a loan and the husband only wants to pass on the liability on her. It was urged that the petitioner has pleaded that he was paying loans and premiums touching Rs.1 lac which itself indicates that the income of the petitioner was much higher. The counsel had referred to the photographs placed on file to show that the petitioner was in a relationship.

9. The counsel for the petitioner did not respond to the lease deed or to the photographs available on record and by way of rebuttal it was only stated that the documents being referred to were not available before the Court below and the evidence was led after the order was passed.

10. So far as the maintainability of the petition is concerned, I find that the question raised in the judgment was not answered and was left open, I do not intend to deliberate on the issue in this petition, leaving it open to be decided in appropriate proceedings. The limited question raised her is whether the interim maintenance allowed to the wife and the child is on the higher side.

11. The Magistrate while deciding the question of payment of interim maintenance forms a *prima-facie* opinion and it can form a final view only after the parties have led

their evidence. As regards the financial capacity, both the Courts below have rejected the stand adopted by the petitioner. The petitioner had placed on record the salary slip, according to which his total income is Rs.1,53,373/- per month. There is a deduction of over Rs.39,000/-. A voluntary PF deduction of Rs.9,910/- is being made besides the deduction of PF of Rs.5,946/-. This appears to be intentionally done so as to show a reduced amount as net salary. The petitioner does not deny that he had a concern by the name of M/s. SVS Facilities Ltd. He claims that business had run into losses and had been closed down. However, the petitioner could not show any document to show that it was going in losses. On the contrary, the income-tax returns filed with the Income-Tax Department show the petitioner to be the Director and the Company is in profit. The petitioner is discharging the loan of over Rs.1 lac per month. He has not been able to explain as to how such personal loans were taken when he had limited resources. The petitioner is paying the rent for a flat in Jhilmil Colony, Delhi. That fact has not been denied or refuted. No rejoinder has been filed. Material has been placed on record to show that the complaint had been made by the residents and the police had recorded the statement of the lady occupying the premises. Considering the documents made available, I find no infirmity in the orders passed by both the Courts below. A wife is entitled to the same status as the husband. The petitioner is working and is also involved in business. His wife and child are entitled to the same status, facilities and financial protection. The obligation of the husband is not moral alone. The husband has failed to produce primary evidence to show that he has deficient income when the factum of running the business is admitted. He has failed to *prima-facie* show at this stage that the business has closed. I find no illegality much less perversity.

The petition is dismissed.

(ANITA CHAUDHRY)
JUDGE

03.02.2016
'Sunil'