

In the High Court of Punjab and Haryana at Chandigarh

Criminal Revision No. 2625 of 2014 (O&M)
Date of Decision: 29.09.2016

Monu Songra

....Petitioner

Versus

Pinki

....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Ashish Gupta, Advocate
for the petitioner.

Mr. P.K.Ganga, Advocate
for the respondent.

ANITA CHAUDHRY, J(ORAL)

The petitioner has assailed the order dated 13.6.2014 passed by the Additional Sessions Judge, Sirsa who allowed interim maintenance of Rs. 10,000/- per month to the wife reversing the order of the Magistrate who had dismissed the application filed under Section 125 Cr.P.C.

The parties were married on 27.11.2010. The husband is a Constable in Rajasthan. There is no child from this marriage. The wife had claimed that she had conceived but it resulted in miscarriage on 1.3.2011. Allegations were made that there were demands of dowry and she was not treated well. She claimed that she was thrown out of the matrimonial home. The petition under Section 125 Cr.P.C. was filed in February 2013.

The Chief Judicial Magistrate vide its order dated 3.10.2013 dismissed the application and the reasons are disclosed in para 8 of the order which reads as under:-

“After hearing ld. Counsel for the parties and having gone

through record carefully I am of the considered opinion that the application is liable to be dismissed. It is admitted case of the parties that they married to each other. It is also admitted case of the parties that they got strained relations between them. It is also admitted fact that no child was born out this wedlock. It is also admitted fact that criminal case u/s 498-A IPC has been registered against the respondent at the instance of the complainant. It is also admitted case that the petitioner filed a petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 which was dismissed as withdrawn. No doubt there are counter allegations against each other and both the parties are trying to make the other party responsible for disturbing the matrimonial life. But in this application, only one this is to be examined as to whether the petitioner is unable to maintain herself or whether he or she is having any sufficient means of income. The copy of FIR mentioned above clearly shows that the petitioner has categorically stated therein that she is physiotherapist doctor meaning thereby that she is well educated and respondent has categorically stated that she is earning 25,000/- per month. Even this amount may be exaggerated however it can be easily inferred that she might have been earning sufficient income maintain herself.”

Aggrieved by the judgment, a revision was preferred by the wife. The Additional Sessions Judge, Sirsa vide its order dated 13.6.2014 was of the view that even if the wife had a professional degree it would not

matter and she would have to gain sufficient experience to earn and there was no allegation that she was working as a doctor in an institute or had opened her own clinic. It allowed the revision and awarded Rs. 10,000/- per month as maintenance.

The petitioner claims that the wife did not want to live with him and she had filed a petition under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights but later the petition was withdrawn as he had appeared and made a statement that he was willing to keep her at his place of posting but the wife refused to accompany him. It was pleaded that the wife had got an FIR registered against him. It was also pleaded that the petitioner had concealed that she was a Physiotherapist before her marriage and was working and she did not mention this fact in her petition and it was a case of concealment. It was pleaded that his basic salary was Rs. 8550/- per month and after deduction, the carry home salary was 15065/- and the Court below had allowed Rs. 10,000/- taking the major portion of his salary, when he had his old parents to look after.

I have heard submissions of both the sides.

Counsel for the petitioner has placed on record a copy of the judgment dated 30.4.2016 to show that the trial had ended in acquittal. He has placed on record a copy of the FIR where the wife had described herself as a physiotherapist (doctor).

The submission on behalf of the petitioner was that the wife had deserted the husband and she did not want to go and live in Rajasthan and she herself withdrew the petition and it was a case of concealment of fact. It was urged that the wife had done her diploma in Physiotherapy after her 12th class and thereafter had completed her Graduation sometime in

2007 and the marriage took place in 2010 and the wife was working even before marriage and the Revisional Court assumed that it would take a number of years for her to settle in her profession. It was urged that the Court did not consider the fact that there was an admission that she was a Physiotherapist and this information was given by her at the time of lodging of the FIR in September 2013.

The submission, on the other hand, was that the respondent was not earning and the husband is under a duty to provide for the wife.

The wife in her petition filed under Section 125 Cr.P.C. did not disclose that she was a Physiotherapist or was earning but in the First Information Report lodged with the police in September 2013 she had mentioned that she was a Physiotherapist (doctor). The information was provided by the complainant. There was no reason for the complainant to mention that. When it has been specifically mentioned it can be assumed that she was a practicing Physiotherapist. The husband is posted in Rajasthan. It is not possible for him to collect the information whether she was running a clinic or about her income. The trial Court had noted this and had declined the application for interim maintenance and rightly so. The Revisional Court based on assumptions wrongly allowed maintenance at the interim stage. It should have taken some affidavit from the wife. The wife had to explain how that fact was introduced in the FIR. There was a categorical assertion in the FIR that she was a Physiotherapist, it appears that the wife was hiding facts. She is capable of earning. The trial Court is yet to consider the case on merits. It will have to determine whether a qualified woman who can get a job can sit idle and insist on maintenance. Everyone has to earn for himself or herself or at least make an effort and would not sit

idle. See *Mamta Jaiswal versus Rajesh Jaiswal 2000(3) MPLJ 100*. The order passed by the Revisional Court is set aside.

Before parting with the order, it is necessary to mention that the petition filed in 2013 has still not been decided. The litigation can really corrode human relationship and it is the duty of the Court to curtail it. There is no need to hurry but procrastination should not be manifest. The Courts should be in complete control over the proceedings and should not permit the *lis* to be prolonged and if either party is delaying the proceedings, necessary steps should be taken.

The petition is allowed. Order dated 13.6.2014 passed by the Additional Sessions Judge, is set aside.

Nothing contained in this order shall be taken as an opinion on merits. The trial Court would independently decide the case on the basis of the evidence that shall be adduced by the parties.

(ANITA CHAUDHRY)
JUDGE

September 29, 2016

Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No