IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR(F) No.143 of 2014 (O&M)
Date of Decision: 24.05.2016

Sanjeev Kumar

...Petitioner

Versus

Sangeeta and another

...Respondents

with

CRR (F) No.199 of 2014 (O&M)

Sangeeta and another

...Petitioner

Versus

Sanjeev 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. Sandeep Singh Jatana, Advocate
for the petitioner in CRR(F)-143-2014 &
for the respondent in CRR(F)-199-2014.

Mr. D.C. Mittal, Advocate
for the petitioners in CRR(F)-199-2014 &
for the respondents in CRR(F)-143-2014.

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ANITA CHAUDHRY, J.

CRM-35528-2014 in
CRR No.199 of 2014

For the reasons set out in the application, same is allowed as prayed for and delay of 48 days in filing the revision is condoned.

CRR(F) No.143 of 2014
CRR(F) No.199 of 2014

1. Two revisions have been filed, one by the husband and the other by the wife against the order passed by the Family Court, Ambala in Petition No. 245 of 2011/2012, decided on 19.05.2014.

2. Sangeeta Rani filed a petition under Section 125 Cr.P.C., seeking maintenance for herself and her 1½ year old son. She was married to Sanjeev Kumar in November, 2009. The wife got a FIR lodged against the husband. The trial ended in acquittal. The husband has filed a divorce petition on the grounds of desertion and cruelty. There is another petition pending for the custody of the child.

3. The wife pleaded that husband was a LIC Agent and was earning Rs.40,000/- per month and had movable and immovable property and she was unable to maintain herself.

4. The Husband denied the income and stated that the wife was doing tailoring and embroidery work and he was doing labour work and used to earn Rs.4,000/- per month.

5. The wife examined herself and besides Sachin Aggarwal from the LIC Office and Gurdev Kaur. The husband gave his own affidavit.

6. The Family Court found that the husband was a LIC Agent. It is necessary to notice the observations made in para nos.16 & 17 of the order, which read as under:-

> "16. As far as quantum of maintenance is concerned, the petitioner no.1 has pleaded that the income of the respondent to be Rs.40,000/- per month as the respondent was working as an LIC agent. The petitioners have also examined Sachin Aggarwal HGA, LIC, Ambala Cantonment as PW2. He deposed that the respondent was a commission agent of LIC. As per record, commission of Rs.8,33,345/- from January 2011 to May, 2013 was given to Sanjeev Kumar. He proved certificate Ex.PW2/A and year-wise earning record of the respondent Ex.PW2/B to Ex.PW2/E. In his cross-examination, he stated that commission is based upon the work of an agent. The income shown by him in Ex.PW2/A was subject to the deduction of 10% income tax and said amount was shown without deduction of the income tax.
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> 17. As per certificate Ex.PW2/A, the respondent received total commission of Rs.8,33,845.71 Ps. from January, 2011 to 21.05.2013 when the said certificate was issued and after deducting 10% income tax, the average of which comes to about Rs.25,000/- per month. Ex.PW2/B to Ex.PW2/E also show year-wise commission received by the respondent. The year-wise break-up also shows the average monthly income of the respondent to be about Rs.25,000/- per month. In his cross examination, the respondent admitted these documents to be belonging to him."

7. The trial Court assessed the income of the husband to be Rs.25,000/- per month and directed him to pay Rs.5,000/- per month to the wife and Rs.2,500/- per month to the child from the date of filing of the petition.

8. The husband is aggrieved as the amount allowed to the wife was on the higher side and his income presently had gone down. It was urged that the work is not permanent and he was ready to bear all the expenses for the child. It was urged that the wife had deserted him and he had been acquitted in the false case lodged by the wife and the wife was able to earn for herself and was working, therefore, he was not bound to pay any maintenance to her.

9. On the other hand, the counsel for Sangeeta had urged that when the income had been assessed as Rs.25,000/- per month, therefore, a sum of Rs.7,500/- per month was on the lower side and should be increased. It was urged that the notice had been issued on the limited aspect only to explore the possibility of amicable settlement and the husband had no right of hearing on merits.

10. In Crl. Revn. (F) No.143 of 2014, the Co-ordinate Bench while issuing notice only to respondent no.1 had noted the prayer made on behalf of the petitioner. It had been submitted then that the matter could be referred to the Mediation Centre to explore the possibility of an amicable settlement. The Co-ordinate Bench had issued notice for the time being only to explore the possibility of an amicable settlement. On the successive dates, it was pointed out that the husband had not paid any amount and the husband was directed to

pay Rs.50,000/-. The matter was referred to the Mediators. The amount was paid in installments. Mediation had failed and the report in this regard had been received. The notice issued was for limited purposes and the amount cannot be said to be encashed.

11. The wife is claiming enhancement of the maintenance amount. The trial Court had kept the income of 3 years into consideration while taking out the average and had noted that the monthly income was about Rs.25,000/-. It should have seen the income of the year 2011 only to assess the excessive.

12. The husband is not having a fixed salary. It depends upon the number of policies he is able to sell. The child was only 1½ year old when the petition was filed. Considering the little evidence on record, I am of the view that the amount that has been allowed to the wife was sufficient. I find no infirmity in the order.

Both the revisions are dismissed.

(ANITA CHAUDHRY)
JUDGE

24.05.2016
'Sunil'