

Crl. Revision(F) No.89 of 2015 (O&M)
with
Crl. Revision(F) No.107 of 2015 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR(F) No.89 of 2015 (O&M)
Date of Decision: 28.09.2016

Sandeep Verma

...Petitioner

Versus

Priyanka Verma

...Respondents

with

CRR(F) No.107 of 2015 (O&M)

Priyanka Verma

...Petitioner

Versus

Sandeep Verma

...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. R.S. Kundu, Advocate**
 for the petitioner in CRR(F)-89-2015 and
 for the respondent in CRR(F)-107-2015.

Mr. Sanjay Vashishth, Advocate
for the respondent in CRR(F)-89-2015 and
for the petitioner in CRR(F)-107-2015.

ANITA CHAUDHRY, J.

Two separate revisions have been filed by the parties as they are aggrieved with the judgment rendered by the Family Court, Faridabad dated 02.03.2015.

The facts which are requisite to be stated for adjudication of these revisions arise from a petition filed under Section 125 Cr.P.C. The facts inter alia are; Priyanka was married to Sandeep in November, 2003. They had two children. The wife had alleged that she was subjected to mental and physical cruelty and she was turned out of the house in September, 2010. Both the children were also taken from her. She lodged an FIR in December, 2010 under Sections 498-A, 406, 506 IPC and also filed a petition under Section 125 Cr.P.C. and another under the Guardians and Wards Act seeking custody of the minor children. The wife claimed that she was living with her parents at Faridabad and was not trained enough for any avocation. She had pleaded that she was 19 years old at the time of her marriage and was a student and she could not pursue her education further as she was not permitted to study after marriage. It was also averred that the husband was a jeweller and running a jewellery store in Mangolpuri, Delhi in the name and style of M/s. Hari Krishan Jewellers, which was in the name of his father. It was pleaded that respondent was a graduate and was earning Rs.2 lacs per month from the jewellery store. It was also pleaded that the respondent owned several properties in Delhi which included a showroom given on rent. The elder brother of the husband

was also running a jewellery shop in Sector - 3 by the name of M/s. Soni Jewellers but the family was joint and their collective income was Rs.5 lacs per month.

The application for grant of maintenance was resisted with immense vigour disputing the averments pertaining to demand of dowry or harassment. It was pleaded that he was already paying Rs.20,000/- per month under the orders passed by the Additional Civil Judge (Sr. Division), Faridabad vide order dated 17.05.2011 and the wife was not entitled to further maintenance. It was pleaded that the wife was in illicit relationship with other persons and she was found with other men on three occasions and she left the matrimonial home with her brother leaving both the sons in his custody on 06.09.2010. It was pleaded that in the proceedings initiated under the Guardian and wards Act, both the children refused to go with her. It was pleaded that he was a gold smith and not a jeweller and was working under his father and had no independent source of income. It was pleaded that the petitioner was getting money from other persons and the relations were confirmed from the call details from the two cell phones.

Both the parties led evidence and produced documents. The trial Court noted the following:-

“From the above discussed testimony, it is clear that respondent belongs to a well off family. He himself is a jeweller. His father and his brother are running jewellery shops at Delhi. Both the children of the parties are studying in Pine Grove School, Kasauli. The annual fee of the children is Rs.5,00,000/-, which is being paid by the respondent. The

respondent has taken a stand that he has no independent source of income and is working under his father. It is a false plea on the face of it as he admitted in the cross-examination that he was filing income tax returns. Even brother of this witness admitted in his cross-examination that annual fee of the children was being paid by the respondent. The respondent has tried to conceal his income. There is no reason to disbelieve the testimony of the respondent that the collective income of the family of respondent was Rs.5,00,000/- per month. The petitioner is already getting Rs.15,000/- per month in a petition under the Domestic Violence Act. The fee of the children of the parties is being paid by the respondent. In these circumstances, it would be just and proper if maintenance of Rs.25,000/- per month is granted to the petitioner from the date of filing of the petition. This amount is in addition to the amount of Rs.15,000/- per month received by the petitioner in another petition. The petitioner is accordingly allowed. The respondent is also directed to pay Rs.11,000/- as litigation expenses to the petitioner. File be consigned to the record room.”

The submission made on behalf of the husband was that the wife was getting maintenance in the proceedings filed under the Domestic Violence Act and the trial Court had allowed maintenance in addition to the maintenance allowed by in Domestic Violence Act proceedings. It was urged that the income of the father should not have been added to calculate the income of the petitioner and the ITRs had been placed on record which are prior to the lodging of FIR and the gross total annual income was Rs.2,95,589/-. Reliance was placed upon ***Jayant Bhargava Vs. Priya Bhargava 2011(3) RCR (Civil) 942*** and ***Dr. Kulbhushan Kunwar Vs. Kumari Mandalsa Kunwar AIR 1971***

SC 234. It was urged that the false FIR was lodged and the trial had ended in acquittal

On the other hand, it was submitted that the husband was a jeweller and both the sons were studying in Convent School in Himanchal Pradesh and wrong plea was taken before the Court below that the expenses of the children were being paid by Sandeep's father. It was urged that the income in the ITRs cannot be accepted as he was paying annual fee of Rs.5 lacs. It was urged that the income-tax returns do not depict the true income.

Record has been perused. The parties were married in November, 2003. Two children were born to them in January, 2005 and March, 2006. Priyanka in her statement in the Court had admitted that in the beginning of her marriage all was well but then the demands started and she was beaten up but did not get her medical done. She had deposed that she was turned out of the matrimonial house and was not allowed to take the children. She admitted that her father-in-law had purchased a plot in her name and in the name of her Jethani in Bahadurgarh, which was in crores but she stated that her father had paid the amount. She could not, however, tell the amount contributed by her father. She admitted that she had got a FIR lodged against her husband. She could not depose about the income of the husband. She admitted that she was using two mobile numbers. She stated that the dowry articles recovered by the police were not taken by her as they were not hers.

Sandeep examined himself, his brother and father. Sandeep had claimed that he was working as a gold smith at his father's shop and he had no independent income. He had stated that he had not filed any complaint with the police nor had filed a divorce petition on the grounds of adultery but he gave two names with whom his wife was in a relationship. He stated that his father was running the business in the name of M/s. Hari Krishan Jewellers. He denied that he was a partner in Soni Jewellers.

Hari Krishan – RW3 stated that his son was paying Rs.5 lacs per annum for the fees of his two children who were in the boarding school. He stated that his son was engaged in the business of gold and silver jewellery and worked for him. He also stated that his daughter-in-law was in touch with other men and had illicit relations and that was the reason for the discord and the mobile phones were taken on fictitious addresses and they had placed on record the call details made from those phones.

Admittedly the wife was awarded interim maintenance of Rs.15,000/- per month in the case filed under the Domestic Violence Act. The trial Court rejected the income-tax return in which the gross total income was shown as Rs.2,95,589/- and was of the view that since the husband was paying Rs.5 lacs per annum for both his children who were studying in a school at Kasauli, therefore, the income had been concealed and awarded Rs.25,000/- over and above the amount that was allowed as interim maintenance in the complaint

filed under the Domestic Violence Act.

Admittedly, the husband has the responsibility of bringing up the child and is also paying for their school fees and shouldering all their responsibilities. The fate of the petition filed under Section 25 of the Guardian and Wards Act is not known. It is clear that the husband has income which is more than Rs.5 lacs per annum. The income of his father cannot be considered. The Court below had rightly assumed that the income of the husband was higher. The trial Court record shows that respondent had placed some call details and the SMSs but it appears that they were not introduced in evidence for reasons only known to them.

The counsel appearing for Priyanka had placed on record the order passed in the D.V. Act proceedings passed on 16.09.2016. The interim order was challenged in a separate petition by the wife but it was withdrawn since the final order had been passed.

The issue for examination is whether the amount allowed by the Family Court is excessive. The wife failed to give any details of bank accounts, amount of insurance or rentals or locality of residence, any club membership, ownership of vehicles or their make. These are some of the factors which could have been considered to make a rough idea or guess his income.

The husband has the entire responsibility of bringing up his children. There is no contribution from the mother. The income-tax

returns do not reflect the actual income earned by the husband. The wife had not provided any material to find his income. No official was summoned from the Income Tax Office or other departments with which he was registered, therefore, it can be purely be on guess work. The only fact available on record is an admission that the children were studying in a boarding school in Kasauli. A sum of Rs.5 lacs is being spent annually on them. The wife is entitled to the same status as she had when she was living with the husband. The husband had stated that he is not maintaining a car and had a scooter. The wife has not given any details. The amount allowed to the wife is certainly on the higher side. Therefore, the order passed by the family Court is modified and maintenance of Rs.20,000/- per month is allowed from the date of application. The amount that has been allowed under the Domestic Violence Act proceedings would be adjusted in the amount.

The petition (CRR(F)-89-2015) filed by the husband is partly allowed. The petition (CRR(F)-107-2015) filed by the wife is dismissed.

28.09.2016
Sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : *Yes/No*