

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.REV.P. 122/2015**

Date of Decision : June 02nd, 2016

HAVALDAR PRAMOD KUMAR SINGH YADAV.....Petitioner

Through **Mr.A.K. Upadhyay, Advocate.**

versus

GEETU & ANR

.....Respondents

Through **Mr.Durgesh Kumar Pandey,
Mr.Randeep Pundir, Mr.Beauty Singh,
Advocates for respondent no.1 and 2.**

**CORAM:
HON'BLE MR. JUSTICE P.S.TEJI**

P.S.TEJI, J.

1. The present revision petition has been filed by the petitioner against the order dated 27.05.2014 passed by the learned Judge, Family Court, Dwarka, New Delhi vide which the petitioner has been directed to pay a sum of Rs.2,000/- per month for the maintenance of the respondent no.1/wife and a sum of Rs.4,000/- per month to the respondent no.2/son.

2. The facts, in brief, are that respondents-herein had filed a petition under Section 125 of the Cr.P.C. claiming maintenance of Rs.15,000/- per month and Rs.10,000/- as litigation expenses for themselves. It was alleged in the petition that the marriage between the petitioner and respondent no.1 was solemnized on 20.04.2008 according to Hindu customs and rights and respondent no.2-herein was born from the said wedlock. In the marriage, sufficient dowry

was given, but the respondent no.1-wife was subjected to harassment and more money was demanded from her. She resided in the matrimonial home for 12 days and thereafter, she was compelled to leave. On 01.11.2008, the petitioner-husband took the respondent no.1-wife to Jammu. On 04.12.2008, the respondent no.1-wife was brought to her matrimonial home where she was humiliated. She was then left at her parental home. It was further alleged that the petitioner-husband had intercourse with the respondent no.1-wife forcibly during her menstrual cycle and gave her medicine due to which she suffered injuries in her uterus. The petitioner-husband arranged a panchayat in front of the elders where respondent no.1-wife was insulted and was told that the petitioner would marry another woman. Due to harassment and dowry demands, the respondent no.1-wife was compelled to live at her parental home. It was alleged that the petitioner-husband was working as Hawaldar in Army and was earning a good salary.

3. In reply to the petition, the petitioner-husband denied the averments made in the petition. It was submitted that the respondent no.1-wife refused to stay with the petitioner; initially the marriage was not consummated because of indifferent attitude of the respondent no.1-wife; the respondent no.1-wife stayed with the petitioner-husband and his family for only a few days; he had filed a petition for restitution of conjugal right and as a counter blast to the same, the respondent no.1-wife filed a complaint in CAW Cell; the respondent no.1-wife was never subject to any kind of harassment or cruelty; it was the petitioner who had borne the delivery expenses of the child

born; the in-laws of the petitioner refused to send the respondents with the petitioner-husband; the petitioner-husband took permission from his Unit at Jabalpur to keep the respondents with him, but the respondent no.1-wife never stayed with the petitioner-husband and the Unit of the petitioner wrote several letters to the father of the respondent no.1-wife to reach to an amicable solution, but they did not resolve the issues. It was further submitted that it was the respondent no.1-wife who had withdrawn from the company of the petitioner-husband without any reasonable cause.

4. Both the parties adduced evidence in support of their case and after hearing the arguments from each side, the Trial Court allowed the maintenance petition vide impugned order dated 27.05.2014. Feeling aggrieved by the same, the present revision petition has been filed by the petitioner for setting aside the order dated 27.05.2014 and/or for reduction of maintenance amount.

5. Arguments advanced from either side were heard at length.

6. Arguments advanced by the learned counsel for the petitioner are that the Trial Court has not appreciated the fact that the petitioner was ever willing to reside with the respondents and maintain them. It was the respondent no.1 who herself chose to reside separately with the petitioner and the petitioner is at no fault. It was further argued that several communications were written by the Unit of the petitioner that the respondent no.1 may contact the commanding office of the petitioner in case she finds any difficulty and to resolve the issues, but the attitude of the respondent no.1 always remained adamant in not residing with the petitioner at the place of his posting. It was further

argued that the Trial Court has not appreciated the evidence adduced by the petitioner in correct perspective. In support of his contentions, learned counsel for the petitioner has relied upon a judgment in the case of *Tarak Nath Biswas v. State of W.B. & Anr. 2002 SCC OnLine Cal 120* in which the order regarding the grant of maintenance in favour of the wife was set aside as the wife had failed to satisfy that she had justified reason for living separately with her husband and that the wife had also failed to prove that she was unable to maintain herself.

7. On the other hand, learned counsel for the respondents has argued that sufficient materials and evidences were adduced to the effect that the respondent no.1-wife was subjected to harassment on account of dowry by the petitioner. It was due to humiliation and harassment meted out to the respondent no.1-wife which compelled her to reside separately from her husband along with her son. It was further argued that the petitioner is earning good and is the husband of the respondent no.1 and father of respondent no.2 and thus he is duty bound to maintain his wife and son as due to compelling circumstances, the respondent no.1-wife is unable to maintain herself and her son. It was further argued that the order passed by the Trial Court is well reasoned and does not call for any interference.

8. From the material placed on record, it is not in dispute that the marriage of the petitioner was solemnized with the respondent no.1 on 20.04.2008 as per marriage invitation card Ex.PW1/2 and marriage photograph Ex.PW1/3. It is also not in dispute that from the said wedlock, respondent no.2 was born on 09.09.2009. It is also not in

dispute that the respondent no.1-wife remained in her matrimonial home initially for only 12 days and then she went to her parental home. Thereafter, the petitioner-husband and respondent no.1-wife stayed together at Jammu while petitioner remained posted there. Thereafter, the respondent no.1-wife stayed at her matrimonial home for about three months and since 01.05.2010, she has been staying at her parental home.

9. The petitioner has further placed reliance on the fact that the Commanding Officer of his Unit had been writing letters to the respondent no.1-wife and to her father requesting them to join the company of the petitioner and that they would be given full protection and support. In support of this plea, the petitioner had placed the said letters on record, but he has failed to prove the same and the same were marked. Neither any author or witness of the said letters were produced in the witness box to prove the said letters, nor the said letters were confronted with the respondent no.1-wife during the course of her cross-examination.

10. It was the consistent case of the respondent no.1-wife that it was due to atrocities and harassment meted out to her at the hands of the petitioner-husband which compelled her to leave the company of the petitioner and her matrimonial home. It has also come on record that an FIR under Section 498A/406 IPC was got registered by the respondent no.1-wife against the petitioner. The only ground of the petitioner is that it was the respondent no.1-wife who herself withdrew from the company of the petitioner without any reasonable cause and to prove this plea, he had taken the shelter of the letters written by his

Department to the respondent no.1-wife and to her father, but the same were not properly proved on record.

11. So far the contention of the petitioner regarding quantum of maintenance amount is concerned, the respondent no.1-wife has successfully established that she was not gainfully employed and that she was unable to maintain herself and her son i.e. respondent no.2- herein. On the other hand, it has not been disputed by the petitioner that he is employed with Indian Army and is earning handsomely.

12. In view of the above discussion, this Court finds no illegality or infirmity in the impugned order. The petitioner has failed to show any exceeding of jurisdiction by the learned ASJ or the failure to exercise the jurisdiction vested in him.

13. Consequently, the present revision petition is hereby dismissed.

JUNE 02, 2016
dd

(P.S.TEJI)
JUDGE