

116 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.2283 of 2017 (O&M)

Date of decision: March 29, 2017

Virender

...Petitioner

Versus

Pooja

...Respondent

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Ms. Gaganjot Kaur, Advocate
for the petitioner.

JASPAL SINGH, J.

Instant revision petition has been preferred under Article 227 of Constitution of India, feeling aggrieved against the order dated 28th October, 2015 passed by District Judge, Panipat whereby an application moved under Section 13 of Hindu Marriage Act, 1955 as amended upto date (for short 'Act' only) for grant of maintenance *pendente lite* was allowed during the pendency of the divorce petition preferred under Section 13 of the Act titled as *Pooja Vs.Virender*.

Undisputably, vide impugned order dated 28th October, 2015, while disposing of an application under Section 24 of the Act, the petitioner was directed to pay maintenance allowance @ Rs.2,000/- per month from the date of filing of the petition under Section 13 of the Act till the disposal thereof.

While assailing the impugned order dated 28th October, 2015, it has been urged by learned counsel for the petitioner that the grant of *ad interim* maintenance is totally incorrect, against the law and facts on the file, which resulted in great miscarriage of justice. In fact, while passing the

impugned order, learned District Judge has not taken the considered view that the respondent has already performed her second marriage during the pendency of the litigation. By filing the written statement in the divorce petition, petitioner has taken a specific stand that the respondent has already performed her second marriage on 8th June, 2014 with Tejpal son of Nafe, resident of Village Noltha, District Panipat.

Aggrieved against her second marriage, the petitioner has already filed a criminal complaint under Sections 494, 506 and 34 IPC in which the respondent has already been examined to face trial by the trial Court. Not only this, the respondent has been served by the process server in the said complaint at the address of her second husband, where she is presently residing with Tejpal @ Tejinder. This fact clearly establishes the stand taken by the petitioner that the respondent has performed her second marriage with Tejpal @ Tejinder that too, without obtaining divorce from the petitioner. As such, she is not entitled for maintenance *pendente lite*. Thus, in the facts and circumstances unfolded above, the grant of interim maintenance @ Rs.2,000/- per month vide impugned order dated 28th October, 2015 is not legally and factually justified and the impugned order is liable to be *set aside*.

This Court has given a deep thought to the submissions made by learned counsel for the petitioners but does not find any legal and factual force therein.

Undoubtedly, the respondent is the legally wedded wife of the petitioner. The respondent-wife Pooja has admittedly preferred a petition seeking divorce under Section 13 of the Act and during the pendency

thereof, an application under Section 24 of the Act was moved by her seeking maintenance *pendente lite* and litigation expenses which has been disposed of vide impugned order dated 28th October, 2015. No doubt, petitioner/husband has taken a specific stand in the written statement filed to the divorce petition that the respondent has contracted second marriage with Tejpal @ Tejinder and in a complaint case she has been served at the address of her second husband i.e. Tejpal @ Tejinder but at this stage, no opinion can be expressed that respondent/wife has already contracted second marriage with Tejpal @ Tejinder. It is a matter of evidence and is required to be decided at the time of disposal of the divorce petition. The respondent is admittedly the wife of the petitioner who has categorically abide that she has no source of income to maintain herself. The petitioner/husband has also failed to bring on record any document that respondent/wife has any independent source of income to maintain herself. Moreover, it is also a matter of evidence and to be adjudicated on merits that the respondent/wife is guilty of causing the circumstances leading to their separate livings as far as the income of the petitioner/husband as concerned. It has been averred by the respondent/wife in the application under Section 24 of the Act that her husband is Electrician by profession and besides doing agricultural work his monthly income is alleged to be around Rs.2,000/- (Rupees Two Thousand), however, she could not place on record any document showing the income of her husband or that her husband is a qualified Electrician. No academic certificate etc. has been placed on record. As such, earning of the petitioner/husband can be deemed to be that of a labourer or equivalent thereto. Since petitioner is an able

bodied person and is legally and morally bound to maintain his wife, who has no independent source of income for her livelihood, the grant of maintenance allowance at the rate of Rs.25,000/- per month is legally and factually justified. The instant revision petition is nothing but appears to have been made with a sole motive not to even make the payment of Rs.2,000/- per month. During the pendency of the divorce petition, no litigation expenses has been awarded by the learned trial Court while disposing of an application under Section 24 of the Act while the respondent/wife has not preferred any revision against the impugned order and feels satisfied.

This Court does not find any illegality or infirmity in the impugned order. Accordingly, finding no merits in the instant petition, the same is dismissed with no order as to costs.

March 29, 2017
m. sharma

(JASPAL SINGH)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No