

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

CR-2723 of 2017 (O&M)
Date of decision: 19.09.2017

Makhan Singh

.... Petitioner

Versus

Manjit Kaur

..... Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Mohit Sadana, Advocate
for the petitioner.

Avneesh Jhingan, J.

The present revision petition has been filed by Makhan Singh (husband) against the order dated 16.02.2017 passed by Additional District Judge, Sangrur vide which the application moved under Section 24 of the Hindu Marriage Act (for short, the Act') by the wife (Manjit Kaur) was partly allowed and the application moved by Makhan Singh (husband) was dismissed.

The wife filed a petition for divorce under Section 13 of the Act claiming cruelty against husband. During the pendency of the petition, an application under Section 24 of the Act was filed by the wife seeking maintenance of Rs.15,000/- per month. On notice, the husband filed reply to the said application and also moved a cross application under Section 24 of the Act claiming maintenance from the wife of Rs.15,000/- per month. The wife also filed the reply to the said application. The Additional District Judge, Sangrur, dismissed the application of the husband holding that no

concrete evidence was produced that the wife was doing very well financially. However, the application of the wife was partly allowed and she was found entitled to a maintenance of Rs.2,000/-per month and Rs.4,000/- for litigation expenses.

Aggrieved of the said order, the petitioner has filed the present revision.

Learned counsel for the petitioner relied upon Section 24 of the Act and argued that there is no bar in the Act that the husband cannot claim maintenance. It was further argued that the Additional District Judge, Sangrur erred in awarding Rs.2,000/- monthly maintenance to the wife and Rs.4,000/- towards litigation expenses. He argued that petitioner is physically handicapped from both the legs. It was further contended that the husband, at present, has no source of income whereas the wife is able to earn from stitching and embroidery. It was prayed that the order dated 06.02.2017 be set aside.

I have heard the learned counsel for the petitioner.

The contentions raised are bereft of any merits and are liable to be rejected. There is no dispute with the proposition of law that there is no bar under Section 24 of the Act for husband to claim maintenance. Section 24 of the Act is reproduced as under :-

“24 Maintenance pendente lite and expenses of proceedings:- Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the

necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.

Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.”

The requirement is that husband can be awarded maintenance if it is established that the husband is not earning and the wife is financially sound and has a regular source of income. In the present case, as has been rightly recorded in the impugned order none of the sides were able to produce any concrete evidence with regard to the financial capability of their spouse. In such circumstances, there was no occasion to award any maintenance to the husband.

So far as the awarding of a meager amount of Rs.2,000/- per month to the wife is concerned, the same is in consonance with its object of Section 24 of the Act.

This court in **Amit Sharma vs. Meenakshi, 2017(2) RCR (Civil) 875**, has been held as under :-

“13. The object behind [Section 24](#) of the Act, 1955 is to provide for maintenance, pendente-lite, to a spouse in matrimonial proceedings so that 5 of 10 during the pendency of the proceedings the spouse can maintain herself/himself and also have sufficient funds to carry on the litigation so that the spouse does not unduly suffer in the conduct of the case for want of funds.

14. A spouse unable to maintain himself/herself is entitled to maintenance on the principle of equi-status and respect that the spouse would have enjoyed if he/she continued to live with other spouse.”

So far as the fact that the petitioner is handicapped, this itself nowhere absolves him from his duty to maintain his spouse. This is so specially when he was handicapped before marriage. The marriage solemnised was a love marriage.

This is a classical case where during matrimonial disputes no detail or proof regarding financial capability is put forth by any of the party. In such circumstances, the Court left with no other alternative acceptance to rely upon guess work.

The allegation was made by the wife that the petitioner is running a meat shop. Though this allegation was denied and it was pleaded that he has no source of income and was surviving at the mercy of his mother does not prima facie appears to be acceptable. He must be having some source

of income or sufficient means in the family on strength of which he got married. In such circumstances, he has to share the burden to support the wife during the course of annulment of such marriage. The allegation that he is running a meat shop appears to be prima facie correct. In para 8 of the petition, a very guarded language has been used 'that presently petitioner is unemployed'. This itself shows that he had some source of earning and therefore, the Court below has committed no error in presuming that he might be running a meat shop.

Otherwise also, the mere allegation that wife is capable of earning would not absolve husband's duty to maintain his spouse. It has to be established that she is actually earning and a mere statement that she is capable of earning will not be enough.

Considering the inflation as on date, the amount awarded of Rs.2,000/-per month and Rs.4,000/- as litigation expenses is very meager by any stretch of imagination.

The petition has no merits and hence is dismissed.

(AVNEESH JHINGAN)
JUDGE

19.09.2017

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Note:

1. Whether the order is speaking/reasoned: Yes

2. Whether the order is reportable : Yes