

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

**CRM-M-16832-2017
Date of Decision: 08.11.2017**

Imran

...Petitioner

Versus

Smt. Parvej & Another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mohd. Arshad, Advocate
for the petitioner.

JAISHREE THAKUR, J. (Oral)

The instant petition has been filed under Section 482 Cr. P.C. seeking to challenge the order dated 19.10.2015, which was subsequently modified by order dated 14.12.2016, by which the petitioner herein has been directed to pay a sum of Rs. 3000/- to respondent No. 1 and Rs. 1000/- to respondent No. 2 as maintenance under Section 125 Cr.P.C.

In brief, the facts are that petitioner-Imran solemnized a marriage with respondent No. 1-Parvej on 02.05.2014 according to Muslim rites and out of this wedlock, one son was born. The respondent-wife alleged that she was turned out of her matrimonial home on account of lack of dowry and was subjected to physical abuse. Since the respondent-wife was not able to maintain herself, she filed a petition under Section 125 Cr.P.C. for grant of maintenance for herself as well as for her minor child. In the said petition, it was alleged that her husband, the petitioner herein, was doing the business of selling milk and earning more than Rs. 25,000/-

per month. A prayer was made for grant of Rs. 10,000/- per month as maintenance allowance.

The said petition was contested and the petitioner denied that he or his family members have been cruel towards the respondent or had demanded dowry articles as alleged. It was argued that it was the wife herself who could not adjust with the petitioner and his family and she refused to join his company. It was argued that the respondent-wife was sewing clothes and, therefore, earning enough to maintain herself and the baby boy. After evidence was led, the learned Sub Divisional Judicial Magistrate, Hodal held the petitioner to be an able body person and presumed that he was capable of earning Rs. 10,000/- per month. The argument raised that the petitioner was doing the business of selling milk; was not countenanced since there was no evidence on the record. Taking the income of the petitioner to be Rs. 10,000/- per month, the Sub Divisional Judicial Magistrate held that the petitioner was liable to pay the maintenance of Rs. 1000/- per month to respondent No. 1-wife and Rs. 500/- per month to respondent No. 2-minor child.

Aggrieved against the said order, a revision petition was filed seeking enhancement of the maintenance so awarded. The Additional Sessions Judge, Palwal, while holding the income of the petitioner to be Rs. 10,000/- per month, held that the maintenance assessed @ Rs. 1000/- per month to respondent No. 1 and Rs. 500/- per month to respondent No. 2; was insufficient. The Additional Sessions Judge took a note of the fact that there was nothing on the record to show that the petitioner herein had any other liability other than to keep the respondents. Consequently, by an order dated 14.12.2016, the order of the Sub Divisional Judicial Magistrate passed

on 19.10.2015 was modified and the petitioner herein was directed to pay Rs. 3000/- per month to respondent-wife and Rs. 1000/- per month to respondent-minor child. Aggrieved against the order enhancing the maintenance, the present petition has been filed.

Learned counsel for the petitioner argues that the amount of maintenance that has been assessed is without any basis and is highly excessive.

I have heard learned counsel for the petitioner and have also perused the record and the pleadings.

The contention of the respondent that the petitioner is earning Rs. 25,000/- per month by selling milk; is not borne out from the record as there is no such evidence available before this Court to come to such a conclusion. In the absence of any evidence, it can be presumed that the petitioner, who is an able body person, aged 28 years, is capable of earning Rs. 10,000/- per month even if he was to work as a daily wager. The respondent-wife and minor child are not in a position to maintain themselves. Section 125 Cr.P.C. has been enacted to ensure that the wife, minor children and parents are not reduced to destitution. It becomes incumbent upon the husband to maintain his wife and minor child. As per law, she is entitled to live a lifestyle in a similar manner and status as she would have lived in the house of her husband. As long as, the wife does not suffer from any disqualification as specified under Section 125(4) Cr.P.C., there is a moral and legal obligation, cast upon the husband, to maintain her adequately so that she can live with dignity.

In the instant case, there is no dispute about the fact that respondent No. 1 herein is the wife of the petitioner and respondent No. 2 is

his minor child. The petitioner, being an able body person, is capable of earning Rs. 10,000/- per month even as a daily wager and, therefore, without having any liability, the payment of Rs. 3000/- per month to the respondent-wife and Rs. 1000/- to the minor child; is not excessive.

Therefore, finding no infirmity in the orders so passed, the instant petition is dismissed being devoid of any merit.

08.11.2017

Ansari

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No