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

CRM-M No.25116 of 2017
Date of Decision : 19.07.2017

Gurpal Singh Gadh

.....Petitioner(s)

Versus

State of Punjab and another

.....Respondent(s)

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present : Mr. Navdeep S. Brar, Advocate
for the petitioner(s).

<u>LISA GILL, J. (ORAL)</u>

Prayer in this petition is for quashing of order dated 3rd November, 2016 passed by the learned Judicial Magistrate, 1st Class, Amritsar, whereby the petitioner's application under Section 127 Cr.P.C. for alteration in the amount of interim maintenance awarded to the respondent has been dismissed.

The petitioner also seeks to challenge order dated 2nd April, 2014 passed by the learned Judicial Magistrate, 1st Class, Amritsar whereby interim maintenance at the rate of `10,000/- per month has been assessed to be paid to the respondent-wife. The petitioner further lays challenge to order dated 10th September, 2014, passed by the learned Sessions Judge, Amritsar whereby revision petition filed by the respondent-wife was partly allowed and she was held entitled to the maintenance from the date of filing of the application under Section 125 Cr.P.C. instead of date of order as directed by the learned Judicial Magistrate, 1st Class, Amritsar.

Brief facts are that the respondent-wife filed an application under Section 125 Cr.P.C. seeking maintenance from the petitioner. The learned trial Court fixed interim maintenance @ Rs.10,000/- per month from the date of the order till disposal of the petition vide order dated 02.04.2014.

The respondent-wife preferred a revision petition seeking maintenance from the date of her petition/application instead from the date of order as directed by the learned trial Court. Revision petition filed by the respondent-wife was accepted.

Thereafter, the petitioner filed an application under Section 127 Cr.P.C. for variation in the maintenance assessed with the averments that he had suffered losses in business, therefore was unable to pay the said amount. This application has been dismissed by the learned trial Court vide order dated 03.11.2016. The petitioner now seeks to challenge all the three orders as abovesaid in the present petition.

It is not in dispute that the petitioner never challenged orders dated 2nd April, 2014 or 10th September, 2014 at any earlier point of time vide which interim maintenance to the respondent-wife was assessed. Learned counsel for the petitioner is unable to point out any reason for not impugning these orders at an earlier point of time. No plausible explanation is forthcoming and no ground is made out at this belated stage for setting aside orders dated 02.04.2010 and 10.09.2014 in exercise of jurisdiction under Section 482 Cr.P.C. In respect to the application preferred by the petitioner for variation in the amount of interim maintenance, moved subsequently, it is argued that the petitioner suffered a great loss in his business, his mother is suffering from serious ailment and is presently under treatment at Delhi, therefore, he is unable to pay the maintenance at the rate of `10,000/- as awarded to the respondent-wife. The learned trial Court, it is submitted, has wrongly dismissed the petitioner's application vide impugned order dated 3rd of November, 2016. It is to be noted that the present petition has been filed on 30th May, 2017, challenging the said order dated 3rd November, 2016.

Be that as it may, it is not in dispute that the petitioner did not place on record any medical bills or any medical record to show the ailments suffered by his mother or the treatment that she is receiving from the hospital/doctor from where the treatment is being received. Opportunity was afforded to the petitioner in the present petition to place on record the necessary medical record. However, despite opportunity, no such medical record is forthcoming. Contention of learned counsel for the petitioner that the Income Tax Return for the last two or three years has not been filed as he had no taxable income is sufficient by itself to prove losses suffered by the petitioner and his consequent inability to pay the maintenance as assessed is untenable, hence rejected. In the absence of any specific and substantial evidence it cannot be presumed automatically that if the petitioner has not filed his income tax returns he has suffered losses.

The learned trial Court rightly observed that there is every possibility that the respondent in order to avoid his liability to pay maintenance to the respondent-wife did not file income tax returns for his business for the last two or three years.

Learned counsel for the petitioner is unable to point out any illegality or infirmity in the impugned orders, which calls for interference by this Court in exercise of jurisdiction under Section 482 Cr.P.C.

Accordingly, this petition is dismissed.

July 19, 2017 **(LISA GILL)**
Dpr **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No