

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

Criminal Misc. No.M- 26783 of 2017(O&M)

Date of Decision: September 7, 2017.

Sunil Kumar PETITIONER (s)

Versus

Kanta @ Priya RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Jaswinder Singh Grewal, Advocate
for the petitioner.

LISA GILL, J.

The petitioner in this case is aggrieved of order dated 19.05.2016 passed by the learned Judicial Magistrate First Class, Sirsa as well as order dated 01.05.2017 passed by the learned Additional Sessions Judge, Sirsa upholding the said order. The petitioner vide impugned order dated 19.05.2016 has been directed to pay a sum of ₹4,000/- per month to the respondent-wife and ₹2,000/- per month to the minor child as maintenance from the date of filing of the petition besides a sum of ₹3,000/- per month as rental accommodation for separate residence of the respondent-wife and her daughter. He has been further directed to pay a sum of ₹50,000/- as compensation for the medical expenses as well as ₹50,000/- as compensation for physical and mental torture to the respondent-wife.

Brief facts of the case are that, a petition under the Protection of

Women from Domestic Violence Act, 2005 was filed by the respondent-wife with

the averments that her marriage was solemnized with the present petitioner on 03.03.2006 at Sirsa. Huge amount was spent on the marriage by her parents. Sufficient dowry was given at the time of marriage. However her in-laws not being satisfied with the dowry, started demanding a car and harassed her for bringing less dowry. The present petitioner was also caught red-handed in an adulterous relationship. Respondent-wife, it is stated, was thrown out of the matrimonial home a number of times but the matter was settled in the Panchayat after fulfilling the demand of dowry of the accused.

A daughter was born to the couple on 02.08.2007 subsequent to which, the respondent-wife was alleged to be harassed even more, being blamed for giving birth to a daughter. When the respondent-wife conceived again, she was forced to undergo an ultrasound for determining the sex of the foetus. When it was discovered that the foetus was a female, the accused petitioner administered some medicines to her which resulted in termination of the pregnancy. Being unable to bear the torture, she called her parents. Medical evidence in respect to injuries received by her on 12.12.2010 was produced.

The respondent-wife further averred that the petitioner in collusion with his girlfriend infected the petitioner with HIV positive virus on 02.08.2010 on a false pretext that her blood samples are required to be taken for checking hemoglobin. FIR No.8 dated 21.01.2012 under Sections 307/326/120B IPC was registered at Ferozepur. The petitioner has been convicted for the said offences. Thereafter, the respondent-wife alongwith her daughter are living with her parents. The present petition under the Protection of Women from Domestic Violence Act, 2005 was instituted on 17.03.2012.

The petitioner duly contested the petition. All the allegations against

him were denied in the written statement filed by him. The parents and brother of the petitioner filed a separate written statement denying that they were liable to be proceeded against in any manner. The petitioner's parents revealed that they had disowned him on 06.01.2011, evicted him from their property and had nothing to do with the present petitioner or his wife.

The learned trial court on considering the facts, circumstances and evidence on record, granted the relief to the respondent-wife as detailed above. Appeals were preferred by both the petitioner as well as the respondent-wife. The learned Additional Sessions Judge, Sirsa vide order dated 01.05.2017 dismissed both the appeals while upholding the order passed by the learned trial court.

It is contended that the petitioner is a poor person. He has been disowned by his own parents. Moreover, subsequent to his conviction in FIR No.8 dated 21.01.2012 under Sections 307/326/120B IPC as mentioned above, he has already paid compensation to the tune of ₹3,00,000/- to the respondent-wife as ordered. Therefore, he is not liable to pay the amount as assessed. Moreover, it is submitted, he has no means of livelihood and there is no proof of his income on record. In this situation, it is submitted that both the learned courts below have erred in awarding the relief to the respondent-wife.

I have heard learned counsel for the petitioner and have carefully gone through the file with his assistance.

It is not denied that the petitioner is a qualified Lab Technician and an able bodied person. It is a matter of record that the petitioner has been convicted in the proceedings emanating from FIR No.8 dated 21.01.2012 vide judgment dated 11.12.2014 (Ex.PW1/C). It is established on record that the

petitioner has been convicted for infecting his wife with HIV virus by administering a HIV positive infected injection to her. This resulted in loss of vision of the respondent-wife. The respondent-wife has led positive evidence to prove physical as well as mental torture at the hands of present petitioner. There is nothing on record to justify the abhorrent conduct of the petitioner in infecting his own wife with HIV positive virus. The minor child is being looked after by the respondent-wife. They are forced to reside with her parents. Proceedings under Sections 323/406/498A IPC against the petitioner are admittedly pending.

Argument that the petitioner has no source of livelihood therefore he should not be burdened, is devoid of any merit. The Hon'ble Supreme Court in **Shamima Farooqui v. Shahid Khan, 2015(5) SCC 705** has held that a husband cannot be permitted to plead inability to maintain his wife due to financial constraints as long as he is capable of earning.

The petitioner in this case is admittedly a qualified Lab Technician. He is an able bodied man therefore, such a plea is not available to him.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in impugned order dated 19.05.2016 passed by the learned Judicial Magistrate First Class, Sirsa as well as order dated 01.05.2017 passed by the learned Additional Sessions Judge, Sirsa which warrants interference by this Court in its jurisdiction under Section 482 Cr.P.C.

Consequently, this petition being devoid of any merit is dismissed.

(**LISA GILL**)
JUDGE

September 7 , 2017.
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No