

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

Crl. Misc. No.M-30711 of 2017 (O&M)

Date of Decision: 22.08.2017

Narender @ Naveen

..... Petitioner

Versus

Kamal Kumari

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.P.K.Chugh, Advocate
for the petitioner.

LISA GILL, J(Oral).

This petition has been filed for setting aside order dated 27.01.2017 passed by learned Judicial Magistrate Ist Class, Palwal, whereby interim maintenance to the tune of ₹. 8000/- towards the respondent-wife has been assessed. Petitioner also challenges order dated 11.05.2017 passed by the learned Sessions Judge, Palwal, dismissing the revision petition preferred by the present petitioner.

Brief facts of the case are that the respondent-wife preferred an application under Section 125 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C'), seeking maintenance for herself as well as the minor child of the petitioner and the respondent. Respondent-wife avers that she was married to the present petitioner on 05.02.2011. However, she as well as their minor son were neglected by the petitioner, who is working as a Manager with Triveni Group Sugar Mills, Sector 16, Noida, U.P. The petitioner, it was stated was earning a sum of ₹ 45,000/- per month, whereas the respondent and her child had no means of financial support. Therefore,

maintenance at the rate of ₹ 20,000/- per month for wife and ₹10,000/- for minor child along with litigation expenses of ₹ 50,000/- was claimed.

Petitioner refuted the allegations while submitting that respondent-wife is a well educated working woman. She chose to live with her parents out of her own wish whereas he is ready and willing to maintain the respondent-wife and their child in their matrimonial home.

Learned trial Court while taking note of the fact that the respondent-wife may be earning a paltry sum of ₹ 8000/- per month, directed that maintenance at the rate of ₹ 8000/- per month be paid to the respondent-wife and ₹ 4000/- per month to the minor child from the date of filing of the petition.

Learned Sessions Judge, Palwal, vide order dated 11.05.2017, dismissed the revision petition preferred by the present petitioner.

Aggrieved therefrom, the present petition has been filed.

It is to be noted that the petitioner has not challenged the maintenance awarded to the minor child. However, an objection is raised to the grant of maintenance to the tune of ₹ 8000/- per month to the respondent-wife.

It is primarily urged that as the respondent-wife is herself earning a sum of ₹ 8000/- per month, therefore, no ground is made out for awarding any maintenance to her.

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

The maintenance as aforementioned has been assessed as an interim measure pending decision of the petition under Section 125 Cr.P.C.

Income of the petitioner to the tune of about ₹ 45,912/- per month is not in dispute. As per the averments of the respondent-wife, she was subjected to

harassment on account of bringing less dowry particularly not having brought an air-conditioner, a double door fridge, laptop and a Swift Deziare Car at the time of marriage. She was asked by the petitioner and family members to bring a sum of ₹ 50,000/- and a Maruti Swift car or she would not be settled in the matrimonial home. Thereafter, the demand was raised to that of ₹ 1 lac and a Maruti car. Her father handed over a sum of ₹ 1,05,000/- to her in-laws on 01.07.2017. Expenses of the delivery of child were borne by her parents. She was ultimately turned out of her matrimonial home on 15.06.2016. Efforts were made to resolve the issue and petitioner started residing with the respondent-wife in a separate rented accommodation. However, she was subjected to physical abuse on 29.04.2015 by her in-laws who came there. She submitted a complaint before the Women Cell and she was again thrown out of her matrimonial home on 29.08.2015.

It is to be noted that the learned Sessions Judge, Palwal has specifically observed that the document referred to by the petitioner in respect to the amount under the Employees State Insurance Scheme (for short 'ESI') to prove that the respondent-wife was earning monthly wages to the tune of ₹ 8442/- had not yet been proved and there is no material to show the type of employment, if any, the respondent-wife is engaged in. It is further rightly observed that even if it is assumed that she was earning the amount as mentioned in the contribution slip of the ESI, she is entitled to seek maintenance from her husband. The expression 'unable to maintain herself' does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 Cr.P.C. In the present case, the petitioner has not specifically denied his income of ₹ 45,000/- per month.

Even if it is assumed that the respondent-wife is earning a sum of ₹ 8000/-

per month, there is no infirmity in the grant of maintenance to the tune of ₹ 8000/- per month to her as interim maintenance. It is not disputed that the minor child is being looked after by the respondent-wife. Furthermore, the learned trial Court would necessarily make requisite adjustments, if required, after leading of evidence by the parties at the time of final adjudication.

Learned counsel for the petitioner is unable to point out any illegality or infirmity in the impugned orders dated 27.01.2017 and 11.05.2017 passed by the learned Judicial Magistrate Ist Class, Palwal and learned Sessions Judge, Palwal, respectively, which calls for interference by this Court in exercise of jurisdiction under Section 482 Cr.P.C.

Accordingly, this petition is dismissed.

22.08.2017
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No