

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

Crl. Misc. M-35505 of 2017 (O&M)
Date of Decision: September 21, 2017

Jagdish

...Petitioner

Versus

Suman and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Kulwan Singh Dhanora, Advocate
for the petitioner.

JAISHREE THAKUR, J. (Oral)

The instant petition has been filed under Section 482 Cr.P.c. for quashing of judgment dated 05.06.2015 passed by Addl. Chief Judicial Magistrate, Hisar whereby, the petitioner has been directed to pay a sum of Rs.1500/- per month to respondent No.2.

In brief, the facts of the case are that the marriage of brother of petitioner namely Dharambir was solemnized with respondent No.1 and thereafter, they lived together. A daughter i.e. respondent No.2 was born out of this wedlock. The brother of the petitioner and husband of respondent No.1 expired on 11.05.2009. Thereafter, the instant complaint under Section 12 of the Protection of Women from Domestic Violence Act, came to be filed by respondents No.1 and 2. The learned

Addl. Chief Judicial Magistrate, Hisar, while allowing the complaint filed by the respondents herein, the petitioner and her mother i.e. respondent No.3 herein were directed to pay a sum of Rs.1500/- per month to minor daughter, since they were in possession of the land belong to the father of minor daughter. Being aggrieved, the petitioner and his mother filed a criminal appeal before the learned Addl. Sessions Judge, Hisar, which stands dismissed by judgment dated 06.06.2016.

Counsel for the petitioner contends that petitioner herein is the unmarried brother-in-law (dewar) of respondent No.1, therefore, he is not liable to pay any maintenance. It is stated that respondent No.1 has solemnized the second marriage, after the death of her husband and respondents No.1 and 2 are having agricultural land in their names, so they can maintain themselves. It is argued that petitioner and his mother have no liability to pay any maintenance to the respondents.

I have heard counsel for the petitioner and perused the record of the case.

The learned Addl. Chief Judicial Magistrate, Hisar, while observing that respondent No.1 herein has re-married, passed the maintenance order in favour of respondent No.2 herein to the extent of Rs.1500/- per month.

The lower Appellate Court, while dismissing the criminal appeal filed by the petitioner and his mother, has observed as under:-

“13. In the case in hand, wife of deceased Dharambir is not granted any relief. Therefore, ratio of law referred by learned counsel for

appellants shall not apply to this case. It is not disputed on record that minor Radha is daughter of Suman and deceased Dharambir.

14. From mutation of inheritance bearing No.7082 placed on record, it is evident that property of Dharambir has devolved on his mother Smt. Norangi appellant as well as wife Suman and daughter Guddi @ Radha. In this backdrop, when property of deceased is stated to be in possession of appellants, who are mother and brother of deceased, grant of maintenance to the tune of Rs.1500/- in favour of minor, cannot be said to be perverse order or against principle of law and fact of record.

15. Learned trial Magistrate was thus perfectly justified in granting a sum of Rs.1500/- to daughter of deceased Dharambir from appellants, who are grand-mother and uncle of minor child”

Counsel for the petitioner has miserably failed to point out any perversity or illegality in the impugned order, so passed. No doubt, after the death of deceased Dharambir, his share stands transferred in the name of respondents No.1 and 2, however, the petitioner and his mother are still in possession of the same. Once it is established on record that the property owned by deceased Dharambir i.e. husband of respondent No.1 and father of respondent No.2 is in the possession of petitioner and his mother, the minor daughter of deceased has a legal right to claim maintenance from the property, which is in possession of petitioner and his mother.

In view of the facts and circumstances of the present case,

this court does not find any illegality in the impugned order so passed.
Accordingly, the petition in hand is hereby dismissed, being devoid of
any merit.

September 21, 2017
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No