In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:2.3.2017

CRM-M-39744 of 2015

Bhavtaj Singh

---Petitioner

vs.

Mandeep Singh

---Respondent

CRM-M-40340 of 2015

Mandeep Singh

---Petitioner

vs.

Bhavtaj Singh

---Respondent

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. J.S.Thind, Advocate
for the petitioner in CRM-M- 39744 of 2015
for the respondent in CRM-M- 40340 of 2015

Mr. Malkeet Singh, Advocate
for the petitioner in CRM-M- 40340 of 2015
for the respondent in CRM-M- 39744 of 2015

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Rekha Mittal, J.

This order will dispose of CRM-M- 39744 of 2015 "Bhavtaj Singh vs. Mandeep Singh" and CRM-M- 40340 of 2015 "Mandeep Singh vs. Bhavtaj Singh" as these have emerged out of the same order dated

31.10.2013 passed by the Judicial Magistrate Ist Class, Amritsar and dated 20.10.2015 by the Additional Sessions Judge, Amritsar whereby Bhavtaj Singh was allowed maintenance at the rate of Rs.5000/- per month by way of enhancement under Section 127 of the Code of Criminal Procedure (in short "Cr.P.C.") by the Trial Magistrate and the same was enhanced to Rs. 7,500/- per month from the date of application by the revisional court.

For the sake of convenience, facts are taken from CRM-M-39744 of 2015.

Marriage of Mandeep Singh and Gaganpreet Kaur, parents of minor Bhavtaj Singh was performed on 26.5.2002. Out of the wedlock, Bhavtaj Singh was born on 1.12.2003. Gaganpreet Kaur filed an application under Section 125 Cr.P.C. claiming maintenance for herself and the minor child which was allowed by granting Rs. 3,000/- per month for the wife and Rs. 2,000/- for the son vide order dated 29.11.2006.

Mandeep Singh filed an application under Section 127 Cr.P.C. on 31.1.2007 for modification of order dated 29.11.2006 on the premise that Gaganpreet Kaur has joined service as a teacher in Education Department on 7.12.2006 at a salary of Rs. 15,000/- per month, therefore, she is not entitled to get maintenance from the husband. Gaganpreet Kaur also filed an application under Section 127 Cr.P.C, seeking enhancement of maintenance for the minor child. Both the applications were clubbed and decided by Judicial Magistrate Ist Class, Amritsar vide order dated 31.10.2013 allowing application of the husband that the wife is not entitled to get maintenance and application filed by the minor through his mother was partly allowed whereby maintenance was enhanced to Rs. 5,000/- per month from Rs. 2,000/- per month. Both the parties preferred revision petitions against the order passed by the trial court. Revision petition preferred by the husband was dismissed whereas the one filed by the minor was allowed and the maintenance was enhanced to Rs. 7,500/- per month from the date of application i.e. 8.9.2010.

Feeling dissatisfied with the orders passed by the Courts below, again two separate petitions have been preferred by the father and minor son. The minor has claimed further enhancement of maintenance whereas the father prays for reduction of maintenance.

Counsel for the petitioner has submitted that Mandeep Singh is an Architect and he filed income tax return for the year 2005-2006 depicting his income to the tune of Rs.1,00,997/-. He owns 4½ acres of land as admitted by him in his cross examination. His father owns more that 10 acres of land and the respondent is admittedly the only issue of his parents. His father retired as an Inspector from Punjab Roadways in the year 2006 and is a pensioner. It was also proved in the proceedings under Section 125 Cr.P.C., part of the present proceedings that the husband had obtained insurance policy with regard to which he had been paying premium of approximately Rs. 15,000/- per annum. Another submission made by counsel is that the child is more than 13 years of age and is a student of Spring Dales School, Amritsar. The respondent has admitted in his cross examination that he has not met his son since the year 2005, sufficient to prove that he did not bother about well being, needs and development of the child. It is vehemently argued that in the light of land owned by the respondent and his father premium paid for LIC policy, income shown in the income tax return for the year 2005-2006 when examined in the context of growing needs of the child who has to face peer pressure and keep pace with his class mates, maintenance awarded by the revisional court needs to be enhanced. In addition, it is argued that admittedly the respondent has no liability except to maintain the child as maintenance awarded to the wife has been cancelled because of her having joined government service.

Counsel for the respondent, on the contrary, has submitted that income from 4½ acres of land would not suffice to meet needs of the respondent and payment of maintenance even at the rate of Rs. 5,000/- per month awarded by the trial court. It is further submitted that till father of the respondent is alive, he cannot claim any right in the land owned by him or a share from the income generated from the land. Further argued that mother of the minor is working as a government teacher and she has equal obligation in law to provide for maintenance of the child. Counsel has submitted that order passed by the revisional court needs to be set aside and the one passed by the trial court may be restored allowing maintenance at the rate of Rs. 5,000/- per month.

I have heard counsel for the parties, perused the paper book and the records.

Initially, the proceedings under Section 125 Cr.P.C. were filed in the year 2004 and the same culminated in order dated 29.11.2006 whereby the respondent was fastened with liability to pay an amount of Rs. 5,000/- per month to the wife and minor child born out of the wedlock. There is nothing on record suggestive of the fact that the respondent challenged the order passed under Section 125 Cr.P.C. He filed a petition under Section 127 Cr.P.C. for cancellation of maintenance allowed to the wife in view of changed circumstances that the wife joined government service in December, 2006 and plea of the respondent in this regard was accepted and entitlement of the wife to get maintenance was set aside. Period of more than a decade has elapsed in between the order passed in application under Section 125 Cr.P.C. till date. Concededly, the respondent has no other obligation except to maintain the child and meet expenses for himself. He is owner of 4½ acres of land whereas his father is owner of more than 10 acres of land. The respondent is the only child of his parents as his sister is stated to have passed away. There is no denial that father of the respondent retired from government service as Inspector with the Punjab Roadways in the year 2006 and is drawing pension. The respondent had admitted the factum of filing of income tax return for the year 2005-2006 showing his income to the tune of Rs. 1,00,997/- per annum. He has further admitted that he engaged the services of a Chartered Accountant for filing his income tax return. It appears that as the husband and wife got entangled in a legal battle due to marital disharmony, the respondent stopped filing income tax return. Taking a cumulative view of the discussion made hereinbefore, it becomes clear that respondent is a man of means and he is under a legal obligation to provide adequate maintenance to his only child.

The child is a student of Spring Dales School, Amritsar. It has been proved on record that Rs. 6,00/- per month are to be paid towards conveyance charges. The child was barely one year old when the first litigation for maintenance was filed by the wife but now he is a teenager being more than 13 years of age. The child has to face the world and peer pressure; he would be requiring money for making the best use of various gadgets available and helpful in his studies. No doubt, mother has also an obligation to provide for maintenance of the child. The mother has never shirked from her responsibility to bring up and take care of the minor and the child is being looked after by a single parent for the past more than 10 years. The needs of the child are bound to increase with his growth in age. He cannot file repeated petitions seeking enhancement of maintenance from time to time. Taking into consideration resources of the father coupled with needs of the child and income of the mother, it would be in the fitness of things if the petitioner is allowed maintenance at the rate of Rs. 10,000/- per month. However, the enhanced maintenance at the rate of Rs. 10,000/- per month shall be payable from the date of order as this court has taken into consideration all the facts and circumstances obtaining as on date to enhance the amount.

In view of what has been discussed hereinabove, petition filed by minor Bhavtaj Singh is partly allowed in the aforesaid terms. As a natural corollary, petition filed by the father is ordered to be dismissed.

(Rekha Mittal)
Judge

2.3.2017
paramjit

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