

CRM-M- 545 of 2016

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In the High Court of Punjab and Haryana at Chandigarh

CRM-M- 545 of 2016

Date of Decision:30.1.2017

Gurinder Kaur and another

---Petitioners

vs.

State of Punjab and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. P.S.Goraya, Advocate
for the petitioners

Mr. Navdeep Singh, DAG, Punjab

Mr. Parminder Singh-I, Advocate
for respondent No. 2

Rekha Mittal, J.

By invoking Section 482 of the Code of Criminal Procedure,
the petitioners pray for modification of orders dated 19.2.2015 (Annexure

P-5) passed by the Judicial Magistrate Ist Class, Gurdaspur and dated 23.10.2015 (Annexure P-7) passed by the Additional Sessions Judge, Gurdaspur whereby the petitioners have been allowed maintenance under Section 127 Cr.P.C.

Counsel for the petitioners has submitted that the petitioners filed an application under Section 125 of the Code of Criminal Procedure (in short “Cr.P.C.”) in the year 2004 and the same was decided on 9.11.2009 whereby petitioner No. 1 was allowed maintenance @ Rs. 800/- per month and Rs. 500/- per month for petitioner No. 2. They filed an application under Section 127 Cr.P.C. for enhancement of maintenance allowance that came to be decided by the trial court vide order dated 26.2.2014 and the maintenance for the petitioners was enhanced to Rs. 1500/- per month for petitioner No. 1 and Rs. 1000/- per month for petitioner No. 2. The revisional court modified the order passed by the trial court to the extent that the petitioners were allowed enhanced maintenance @ Rs. 2500/- and Rs. 2000/- per month respectively. It is argued with vehemence that the trial court has allowed enhancement of maintenance from the date of order in place of from the date of application without

assigning any reason. Another submission made by counsel is that though the courts below have accepted that petitioner No. 1 is suffering from a serious medical problem due to kidney failure as proved on the basis of documentary evidence but still she has not been allowed sufficient maintenance for her day to day needs as well as medical expenses.

Counsel for the respondent has nothing to say with regard to entitlement of the petitioners to enhanced maintenance from the date of application. However, it has been submitted that keeping in view salary of the respondent coupled with his liability to meet expenses of his old aged parents, assessment made by the revisional court cannot be faulted with.

I have heard counsel for the parties, perused the paper book particularly the orders impugned.

Hon'ble the Supreme Court of India in **Sau Suman Narayan Niphade and another vs. Narayan Sitaram Niphade and another 1996 SCC (Criminal) 53** has held that it is a matter of discretion of the Court whether to allow enhanced maintenance from the date of application or from the date of order. However, there cannot be any dispute about the settled position in law that judicial discretion is to be exercised by the Court

on sound principles so that it may not be termed as arbitrary or whimsical. In the case at hand, the courts below have not adverted to this issue much less recording any reason as to why the enhanced maintenance is not admissible to the petitioners from the date of application or the same is to be allowed from the date of order. I would hasten to add that the petitioners claimed enhancement in maintenance on the ground of medical condition of petitioner No. 1 and increased expenses on education of petitioner No. 2. Taking into consideration the facts and circumstances of the instant case, I find merit in contention of the petitioners that they are entitled to enhanced maintenance from the date of application.

This brings the Court to the quantum of maintenance assessed by the revisional court. Indisputably, respondent-husband is working as a supervisor at Lehra Mohabat Plant, drawing salary of more than Rs. 15000/- per month. There is nothing on record suggestive of the fact that the respondent has an obligation to meet expenses of his parents. It appears that such a plea has been raised before the Court in order to deny adequate maintenance to the petitioners.

Counsel for the respondent has not disputed findings of the

courts below that petitioner No. 1 has suffered kidney failure thus, requiring constant medical care and treatment. Taking into consideration prices of daily necessities of life, educational expenses of the child, medical needs of petitioner No. 1 and salary of the respondent, it would be in the fitness of things if the petitioners are allowed enhanced maintenance @ Rs. 5000/- and Rs. 2500/- per month from the date of application filed under Section 127 Cr.P.C. Accordingly, the orders passed by the courts below are modified in the aforesaid terms.

For the foregoing reasons, the petition stands disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

30.1.2017
paramjit

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