

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

CRM-M-48743-2017

Date of decision-20.12.2017

Bohar Singh

...Petitioner

Vs.

Rekha

...Respondent

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. J.S.Grewal, Advocate for the petitioner.

JITENDRA CHAUHAN, J. (Oral)

By way of the instant petition filed under Section 482 of the Criminal Procedure Code, the petitioner has laid challenge to order dated 25.04.2017 (Annexure P-2) passed by learned Sub Divisional Judicial Magistrate, Abohar and order dated 20.09.2017 (Annexure P-4) passed by learned Additional Sessions Judge, Fazilka, thereby granting interim maintenance to the respondent to the tune of Rs.7,000/- per month in proceedings under the Protection of Women from Domestic Violence Act, 2005.

It is contended that the petitioner was married to one Simranjeet Kaur on 19.02.1992 and their marriage is still subsisting. The respondent is also a married lady. She was married to one Mukesh Kumar and out of the wedlock two children were born. Their marriage is also still in subsistence. Thus there is no relationship of husband and wife between the parties as alleged in the complaint. It is thus contended that once the factum of marriage itself is disputed by the petitioner, the impugned orders granting interim maintenance to the respondent are illegal and perverse.

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

It is the case of the respondent that she was earlier married to one Mukesh Kumar and out of the wedlock two children were born. However, in the year 2002, her husband Mukesh Kumar suddenly disappeared and his whereabouts till date are not known. In the year 2009, respondent-Rekha solemnized marriage with the petitioner with their mutual understanding and thereafter resided together as husband and wife. In order to prove the factum of marriage and relationship between the parties, the respondent has placed on record certain photographs. Even otherwise, prior to filing the petition for grant of maintenance, the respondent had filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and during the pendency thereof, a compromise was effected between the parties and petitioner agreed to pay Rs.7,000/- per month to the respondent and issued 25 cheques in her favour. Thus the learned Courts below prima facie holding the respondent legally wedded wife of the petitioner have rightly granted interim maintenance in her favour. In case, the respondent fails to prove her relationship with the petitioner, as asserted by her, the petitioner can claim refund of the maintenance amount, if any, received by the respondent during the pendency of the petitioner. Therefore, this Court is not inclined to go into the merits of the assertion raised by the petitioner disputing the relationship of husband and wife between the parties.

Otherwise also, the petitioner has failed to prove on record that

the respondent is earning enough to sustain herself. It is moral and legal duty of the petitioner to maintain the respondent. The amount awarded by the Courts below is the interim relief which is subject to modification on either side.

Therefore, this Court does not find any ground to interfere in the orders passed by the Courts below which are hereby affirmed.

20.12.2017

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No