IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.3882 of 2013 (O&M)
Decided on: 17.05.2017

Harmesh Singh

....Petitioner

Versus

Surinder Kaur ....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Navjot Singh, Advocate for the petitioner.

Mr. G.N. Malik, Advocate for the respondent.

REKHA MITTAL, J.

The present petition directs challenge against orders passed by the Courts below whereby the petitioner has been directed to pay maintenance to the respondent – wife @ Rs.5,000/- per month under Section 125 of the Code of Criminal Procedure (in short 'Cr.P.C.').

The petitioner and respondent performed marriage about 27-28 years ago and out of their wedlock, there are three sons who have already attained majority before the application under Section 125 Cr.P.C. was filed in July, 2007. The respondent – wife claimed maintenance by alleging that the petitioner – husband is earning Rs.10,000/- per month by working as a Carpenter, another amount of Rs.10,000/- per month by plying a tempo and Rs.5,000/- per month from a cycle/motorcycle stand in bus-stand, Bassi Pathana besides interest income on Rs.20/25 lacs lying deposited in a bank, therefore, he is liable to pay maintenance @ Rs.10,000/- per month.

The parties were permitted to adduce evidence in support of their respective contentions. After having heard counsel for the parties in the light of materials on record, the trial Court vide order dated 14.09.2012 awarded maintenance @ Rs.5,000/- per month from the date of application.

The appeal preferred by the petitioner came to be decided by the Additional Sessions Judge, Fatehgarh Sahib whereby the findings recorded by the trial Court were affirmed without any variance.

Counsel for the petitioner has challenged the impugned order primarily on two counts. The first submission made by counsel is that as respondent is residing away from the petitioner according to her own volition, she cannot claim maintenance in view of the provisions of Section 125(4) Cr.P.C. Another submission made by counsel is that the income tax returns sought to be relied upon by the respondent to prove income of the petitioner have not been proved, in accordance with law, therefore, findings recorded by the Courts below with regard to income of the petitioner on the basis of income tax returns cannot be allowed to sustain and liable to be set-aside.

Counsel for the respondent has supported the impugned orders with the submission that as the petitioner – husband had been giving beatings to the wife, she had no option except to live in a separate house with her sons but she is residing in one of the houses owned by the petitioner. Further submitted that an amount of Rs.5,000/- may not be sufficient to meet day to day requirements of the respondent who is more than 60 years of age.

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

The respondent appeared in the witness-box and tendered into evidence her duly sworn affidavit Ex.AW1/A. In para 2 of the affidavit, it has been averred that the respondent neglected the deponent without sufficient cause and also refused to maintain her for the last about 8/9 years. Her husband felt annoyed as marriage of Harpreet Singh elder son of the parties was performed with a girl who is physically impaired having one arm.

A relevant extract from para 2 of the affidavit of the respondent reads as follows:-

> *".....There is no fault of the deponent and the deponent never objected to live in the house and further never refused to prepare his meal and never made bad behaviour with the respondent. The respondent gave beatings to the deponent many times."*

A relevant extract from her cross-examination recorded in Punjabi but translated in English, reads as follows:-

> *"Harmesh Singh resides with my mother-in-law Raj Kaur. I do not serve meals to my husband but give it to my mother-in-law. My elder son is married. It is wrong to suggest that I had been fighting with my husband. I am not ready to live with my husband. I want to reside separately and is residing separately. I have been residing in the separate house of my husband as per my wish."*

The respondent has explained as to why she is residing separately from her husband as the husband had been giving beatings to her. There is no challenge to her testimony that she had been serving meals to her mother-in-law. This fact alone is sufficient to substantiate plea of the respondent that she has been residing away from the husband due to circumstances created by him. There is nothing on record suggestive of the fact that had the respondent got a congenial atmosphere by staying with her husband, there was any reason for her to stay away from the husband and that too at this age when the parties have already spent number of years of matrimony together and have three sons from the wedlock.

Hon'ble the Supreme Court of India in ***"Sunita Kachwaha and others vs Anil Kachwaha",*** **2014(4) RCR (Criminal) 831** has held, quoted thus:-

> *"The proceeding under Section 125 Cr.P.C. is summary in nature. In a proceeding under Section 125 Cr.P.C., it is not necessary for the Court to ascertain as to who was in wrong and the minute details of the matrimonial dispute between the husband and wife need not be gone into. While so, the High Court was not right in going into the intricacies of dispute between the appellant – wife and the respondent and observing that the appellant – wife on her own left the matrimonial house and therefore she was not entitled to maintenance. Such observation by the High Court overlooks the evidence of appellant – wife and the factual findings, as recorded by the Family Court."*

Concededly, consistent findings have been recorded by the Courts in favour of the respondent – wife. Taking into account the aforesaid observations coupled with the limited scope of revisional jurisdiction, I find myself unable to accept submissions of counsel for the petitioner that the respondent – wife is residing away from the husband without any sufficient reason or she has rendered herself dis-entitled to get maintenance under Section 125(4) Cr.P.C.

This brings the Court to the plea with regard to non-proving of income tax returns. As per the settled position in law, proceedings under Section 125 Cr.P.C. are summary in nature. The strict principles of law of evidence are not applicable to the proceedings. The Court of appeal dilated on this issue in detail, in para 13 of the judgment. Counsel for the petitioner has not disputed the factual findings recorded in para 13 of the judgment. It is also undisputed position of the case that the petitioner owns two houses out of which one is occupied by the petitioner and the other is used by the respondent and her sons. The petitioner in his cross-examination has admitted that he had two FDRs of Rs.1,00,000/- each. He has also admitted having prepared a PAN Card and availing the services of an Advocate for filing income tax returns.

Taking into consideration the evidence on record, I do not find any merit in contentions of the petitioner that the Courts have committed any error much less illegality by relying upon the income tax returns to assess his income and maintenance @ Rs.5,000/- per month.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the petition fails and is accordingly dismissed.

17.05.2017 **(REKHA MITTAL)**
yakub **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable: Yes/No