

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

Crl. Revision No.3822 of 2015(O&M)
Date of Decision: August 23, 2017

Pushpinder Kaur

...Petitioner

Versus

Balbir Singh and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Jaswant Jain, Advocate
for the petitioner.

Mr. S.K. Verma, Advocate
for respondent No.1.

JAISHREE THAKUR, J. (Oral)

CRM-33335-20158

There is a delay of 68 days in filing the present revision petition.

2. It is contended that the petitioner was under a bona fide belief that the impugned order dated 14.05.2015 could be challenged under Section 482 Cr.P.C. for which there is no prescribed period of limitation, but after consulting the lawyer, she came to know that the said order could be challenged by filing a revision petition, resultantly, the delay in question has occurred.

3. The application is duly supported by affidavit.
4. Considering the aforesaid explanation, which is duly supported by affidavit, the application in hand is hereby allowed and the delay of 68 days in filing the accompanying revision petition is condoned.

CRR-3822-2015

1. The instant petition has been filed seeking to challenge the order dated 14.05.2015 passed by the Sessions Judge, Sirsa, modifying the order dated 28.01.2015 passed by Judicial Magistrate Ist Class, Sirsa, only to the extent that the maintenance amount of Rs.9000/- per month, as assessed, would be paid from the date of the petition, without enhancing the amount as prayed for.
2. The brief facts as alleged are that the petitioner-wife approached the Chief Judicial Magistrate, Bhatinda, by filing an application under Section 125 Cr.P.C., which was disposed of by order dated 01.03.2008 with a direction to respondent No.1 to pay a sum of Rs.1200/- per month to the petitioner-wife and Rs.600/- per month each to her two sons. Thereafter, the petitioner-wife filed a suit under Order 33 Rule 1 CPC, as indigent person, for fixing maintenance allowance to the plaintiffs @ Rs.6000/- each per month i.e. total amounting to Rs.18,000/- per month under the Hindu Adoption and Maintenance Act, 1956 and while deciding the application for interim maintenance by order dated 08.08.2011, which was filed along with the said suit, the trial court awarded Rs.2000/- per month for petitioner-wife and Rs.1500/- per month each for the minor sons of the petitioners. This order was challenged by preferring an appeal before

the learned Additional District Judge, however, being in doubt regarding maintainability of the appeal, the same was withdrawn and the order dated 08.08.2011 was challenged before this court by way of Civil Revision No.2673 of 2012. This court by order dated October 09, 2013, while disposing of the said civil revision, enhanced the interim maintenance to Rs.9000/- per month to be paid to petitioner-wife and her two minor sons proportionately, from the date of the application. Thereafter, the petitioner-wife filed the instant complaint under Sections 12, 17, 18, 19, 20, 23 and 28 of the Protection of Women from Domestic Violence Act, 2005, in which, the impugned order came to be passed declaring the petitioner entitled to maintenance @ Rs.9000/- per month, but from the date of the petition.

3. Mr. Jaswant Jain, learned counsel appearing on behalf of respondent No.1-wife contends that as per the salary slip of respondent No.1-husband, the gross salary payable to him in the month of December, 2016 is Rs.62,509/- per month, therefore, the petitioner is entitled to 1/3rd of the said amount towards maintenance in the present proceedings.

4. Per contra, Mr. S.K. Verma, learned counsel appearing on behalf of respondent No.1-husband, vehemently counters the arguments addressed by counsel for the petitioner, with the prayer to dismiss the instant criminal revision.

5. I have heard the arguments addressed by counsel for the parties, apart from perusing the record.

6. The petition filed by the petitioner-wife under the Protection of Women from Domestic Violence Act, 2005, was decided by learned

Judicial Magistrate Ist Class, Sirsa, by judgment dated 28.01.2015 with the following relief:-

“..... Accordingly, this Court deems it appropriate to grant the relief provided under Section 20 of the Act i.e. financial help to the petitioner by the respondent No.1, who has neglected to maintain her and has committed the act of violence upon the petitioner. The petitioner has further put on record document Ex.PX certified copy of the salary statement of respondent No.1 issued by the Principal of the School, where the respondent is working which shows that respondent No.1 is earning more than Rs.36,000/- per month. However, the respondent has no other responsibility except for the maintenance of the petitioner and her children. Hence, this Court hereby orders the respondent No.1 to pay an amount of Rs.9,000/- per month for the maintenance of the petitioner. Since the petitioner is also receiving the amount under Section 125 of Cr.P.C. as ordered by the Hon'ble High Court, therefore, the amount already paid under that petition is directed to be set off against the arrears of maintenance in the present petition.....”

7. This order was not challenged by respondent No.1-husband, however, the petitioner-wife challenged the said order in appeal before learned Sessions Judge, Sirsa, which was disposed of by judgment dated 14.05.2015, with the observations that:-

“5. Indisputably, Smt. Pushpinder Kaur appellant-wife along with her two minor children has been residing separately from respondent No.1 for the past many years. In a revision petition moved before Hon'ble High Court against maintenance allowance order of trial

Magistrate recorded in a petition under Section 125 of the Code of Criminal Procedure of appellant-wife and her two minor children, the already awarded amount in the sum of Rs.2000/- per month to the appellant-wife and Rs.1500/- per month each to her two sons was enhanced to Rs.9000/- per month in their favour. There is no dispute of the fact on behalf of appellant that in the past she had initiated multiple civil as well as criminal proceedings against respondent No.1 which caused him mental agony as well as financial loss. No doubt respondent No.1 had drawn gross salary of Rs.45046/- during the month of July, 2014, which evidence from Ex.PX, yet award of Rs.9000/- per month solely in favour of appellant by no means can be rated insufficient for livelihood of appellant. Consequently, no ground is made out to make any enhancement in the already awarded maintenance amount of Rs.9000/- per month as granted by the court below.

6. At the same time, pertinent to mention that the impugned order fails to spell out any particular date of commencement, thereby, holding respondent No.1 liable to pay the awarded maintenance amount to appellant-wife. Accordingly, the impugned order is modified to the extent that Balbir Singh respondent No.1 shall make payment of maintenance amount of Rs.9000/- per month as awarded by the learned trial Magistrate from the date of petition i.e. 26.05.2010.....”

8. In this criminal revision, this court has to decide the question that as to what suitable amount, the petitioner-wife is entitled to, keeping in view the gross salary of respondent No.1-husband, considering the other liabilities of both the petitioner-wife and respondent No.1-husband.

9. Admittedly, the petitioner-wife and her two minor sons are already getting a sum of Rs.9000/- per month proportionately, as per the orders passed by this court in CR No.2673 of 2012 in a proceeding initiated under the Hindu Adoption and Maintenance Act, 1956. As per the salary slip produced on record, respondent No.1-husband was having gross salary of Rs. 62,509/- in the month of December, 2016. There is nothing on record to show that respondent No.1 has any other responsibility, except the petitioner and two minor sons. In the case in hand, petitioner-wife along with her two minor sons is residing separately from respondent No.1-husband for the last many years, as such, more funds are required for the education and upbringing of the minor children. Amongst the others, one of the main reason for enacting the Protection of Women from Domestic Violence Act, 2005, is to provide financial help to the abandoned woman, who has no means or source to maintain herself.

10. Considering the facts that petitioner and her two sons are already getting Rs.9000/- per month proportionately, in the proceedings initiated under the Hindu Adoption and Maintenance Act, 1956 and that respondent No.1 was getting Rs.62,509/ per month as gross salary in the month of December, 2016, this court deems it appropriate to enhance the amount of maintenance to Rs.11,000/- per month from the date of filing of

this criminal revision. However, the petitioner would be entitled to Rs.9000/- per month as maintenance, from the date of filing of the petition before Judicial Magistrate Ist Class, Sirsa, uptill the date of filing this criminal revision. It is made clear that this amount would be in addition to the maintenance, which the petitioner and her two sons are already getting under the Hindu Adoption and Maintenance Act, 1956. Respondent No.1 is directed to clear that arrears of maintenance within a period of three months, from the date of this order. However, the amount already paid by respondent No.1 in these proceedings, shall be adjusted towards the arrears.

11. With the aforesaid modifications in the impugned orders, the petition stands disposed of.

August 23, 2017
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No