

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

Criminal Revision No. 3737 of 2016 (O&M)

Date of decision : April 19, 2017

Sameer Gandhi

.....Petitioner

Versus

Pooja Gandhi

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vikas Lochab, Advocate
for the petitioner.

LISA GILL, J.

The petitioner is aggrieved of order dated 28.04.2016 passed by the learned Sessions Judge, Faridabad whereby it was directed that a sum of ₹7,000/- be paid by the petitioner for the upbringing and maintenance of his minor child as an interim measure during the pendency of the proceedings initiated by the respondent under the Protection of Women from Domestic Violence Act, 2005 ('the Act' – for short).

Brief facts are that the respondent i.e. the wife of the petitioner filed an application under Section 12 of the Act. An application was filed by her praying for interim relief. The application filed by her was dismissed by the learned Judicial Magistrate First Class, Faridabad on 25.08.2015 on the ground that the respondent was earning a sum of ₹15,000/- per month. It was observed that as the respondent-wife was earning much more than her

husband (present petitioner), therefore, her application for interim maintenance was dismissed. The above said order dated 25.08.2015 was challenged by the respondent (wife) before the learned Sessions Judge, Faridabad. It was observed by the learned Sessions Judge, Faridabad in the impugned order dated 28.04.2016 that as both the parties have admitted that they are earning ₹20,000/- to ₹22,000/- each per month, no ground was made out for grant of interim maintenance to the wife. However, a sum of ₹7,000/- per month was assessed to be paid for the maintenance and upbringing of the minor child of the parties. Aggrieved therefrom, the present petition has been filed by the petitioner.

Learned counsel for the petitioner vehemently argues that the respondent-wife is earning much more than the petitioner. In this situation, the petitioner cannot be made liable for payment of any maintenance for the upbringing of the child as held by the learned Sessions Judge, Faridabad. Therefore, this petition be allowed and the impugned order dated 28.04.2016 be set aside.

I have heard learned counsel for the petitioner and have gone through the file with his assistance.

Marriage between the parties solemnised on 22.01.1999 at Faridabad is not in dispute. It is also not disputed that a minor daughter was born out of this wedlock. However, matrimonial dispute arose between the parties. The petitioner and the respondent-wife have both admitted that they are earning ₹20,000/- to ₹22,000/- each per month. Their minor daughter is residing with the respondent-wife and is being looked after by her. It is to be noted that the learned Sessions Judge, Faridabad has observed in order dated 28.04.2016 that during the course of proceedings, the husband

(petitioner) had agreed to contribute his share for the maintenance and upbringing of the daughter. Relevant paras of order dated 28.04.2016 read as under:-

“8. During the pendency of the present appeal before this Court on previous dates efforts were made by this Court to convince the parties to arrive at amicable settlement. However, the same proved futile. During the course of such proceedings and arguments, the appellant-wife and respondent-husband have admitted this fact that both of them are earning ₹20,000/ ₹22,000/- per month each. Since the daughter born out of the wedlock of both the parties is residing with the appellant-wife and she is maintaining her, so, during the proceedings the respondent-husband had also agreed to contribute his share for the maintenance and upbringing of the daughter. Thus, in view of these facts and circumstances, this Court is of the considered opinion that respondent-husband should at least contribute ₹7,000/- per month for the upbringing and maintenance of the daughter i.e. applicant No. 2. However, it is made clear that this amount of interim maintenance of ₹7,000/- per month would be applicable from the date of institution of the present appeal preferred by the appellant-wife.

9. Resultantly, as a consequence to the aforesaid discussion, the present appeal preferred by the appellant-wife is hereby accepted and the applicant No. 2 i.e. daughter of both the parties is held entitled to a sum of ₹7,000/- per month for her upbringing and maintenance which would be payable by the respondent-husband from the date of institution of the present appeal preferred by the appellant-wife.”

There is no dispute that the petitioner, who is the father of the minor child, has an equal responsibility for the maintenance and upbringing of the daughter. He cannot escape his liability on the ground that the respondent-wife is earning more than the amount earned by him.

Furthermore, it has been recorded by the learned Sessions Judge, Faridabad that during the course of proceedings the petitioner had agreed to contribute his share for the maintenance and upbringing of the child. In this factual matrix, it does not lie with the petitioner to urge that he is not liable to pay any amount for the maintenance and upbringing of the child. As far as the quantum assessed by the learned Sessions Judge, Faridabad is concerned, learned counsel for the petitioner is unable to point out any illegality or infirmity therein. In case, the learned trial Court on appreciation of the evidence brought forth by both the parties, arrives at any other conclusion, the amount in question can always be adjusted. Therefore, finding no ground to interfere in the impugned order dated 28.04.2016 passed by the learned Sessions Judge, Faridabad, present revision petition is dismissed.

There is an application for condonation of delay of 69 days in the filing of this revision petition. As the matter has been dealt with on merits, the said application for condonation of delay is rendered infructuous.

Ordered accordingly.

April 19, 2017

rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes

Whether reportable : Yes/No