

CRR(f)-156 of 2014

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In the High Court of Punjab and Haryana at Chandigarh

CRR(f)-156 of 2014

Date of Decision:24.3.2017

Bobi Devi

---Petitioner

vs.

Sanjay

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Pankaj Mehta, Advocate
for the petitioner

Mr. Sudhanshu Makkar, Advocate
for the respondent

Rekha Mittal, J.

The present petition directs challenge against order dated 14.7.2014 passed by the District Judge, Family Court, Bhiwani whereby application filed by the petitioner under Section 125 of the Code of Criminal Procedure (in short Cr.P.C.”) for grant of maintenance has been dismissed.

The facts relevant for disposal of the present petition are that the petitioner performed marriage with Sanjay son of Banwari on 6.11.1996. Out of the wedlock, four children namely Kavita, Kanha, Sapna and Rahul were born. The petitioner claimed maintenance on the allegations that she was turned out of the matrimonial home during night hours on 25.8.2012

after causing injuries and since then she has been residing at her parental home. It is pleaded that the petitioner was being harassed by her husband and his family members for bringing less dowry. With regard to income of the respondent/husband, it is averred that he has 8 kallas of agricultural land, working as a cashier on a crusher at a salary of Rs. 20,000/- per month and earns from sale of milk of buffalos.

The respondent denied the allegations of cruelty and harassment etc. on the ground of alleged demand of dowry. It is averred that the petitioner developed illicit relations with one Ashok son of Dariya Singh resident of village Ratera and is living in adultery. The petitioner and respondent had been doing labour work at Bheema Stone Crusher at village Khanak. Ashok was working as a clerk at New Janta Stone Crusher. The petitioner used to disappear with Ashok and develop illicit relations with him. On 24.8.2012, the petitioner alongwith Rahul their son ran away with Ashok and Bharat son of Durga Dass on a motor cycle. He followed them and reached village Guranpura; petitioner and Rahul were found with Ashok on a motor cycle. When the respondent asked the petitioner to accompany him, the petitioner, Ashok and Bharat gave him merciless beatings with bricks and stones. He was medico legally examined at CHC, Tosham, referred to Civil Hospital, Bhiwani and later referred to PGI MS, Rohtak. Rapat No. 21 dated 25.8.2012 was recorded with the police and FIR No. 258 dated 26.9.2012 for offence under Sections 323, 325 read with Section 34 IPC was lodged against Ashok and others. The police did not challan the petitioner and Bharat. He filed a complaint in the Court under Sections 323, 325, 497, 498, 506 read with Section 34 IPC which is still

pending.

Both the parties were afforded an opportunity to adduce evidence. The petitioner appeared in the witness box and examined Panmeshwari, her mother PW2 and EHC Bal Kishan PW3. On the other hand, Sanjay respondent stepped into the witness box and examined Ram Sarup RW2, Ramdhari, Assistant Ahlmad RW3 and Kavita, one of the daughters of the parties RW4.

The learned trial court framed three questions for determination, reproduced in para 9 of the judgment. On consideration of rival submissions made by counsel for the parties in the light of materials on record, it was held that the petitioner herself left the matrimonial home and it is not proved that the respondent harassed or willfully refused or neglected to maintain the petitioner.

Counsel for the petitioner has submitted that the respondent-husband denied maintenance claim of the petitioner on the sole premise that the petitioner is living in adultery with Ashok. It is argued that the learned trial court without recording any finding that the petitioner is living in adultery with Ashok has non-suited her claim when admittedly she has got no source of income to maintain herself and is residing at her parental home with her old aged mother. According to counsel, the petitioner being wife of the respondent should be allowed maintenance in order to save her from starvation.

Counsel for the respondent, on the other hand, has supported the judgment passed by the trial court with the submission that testimony of the respondent was not subject to cross examination, therefore, averments

raised by the respondent and reiterated in his duly sworn affidavit filed by way of examination in chief remained unchallenged. It is further argued that plea of the respondent that the petitioner is living in adultery gets duly substantiated/corroborated by testimony of Kavita, daughter of the parties.

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

Indisputably, the petitioner is the legally wedded wife of respondent Sanjay and out of their wedlock, four children were born and they are residing with the husband. On due consideration of pleadings and so also the submissions made by counsel for the parties, it becomes undisputed position of the case that the respondent denied claim of the petitioner on the solitary ground that she is living in adultery with Ashok. Perusal of the judgment passed by the trial court leaves no manner of doubt that the court has not recorded any such finding that the petitioner is living in adultery, therefore, she is not entitled to get maintenance.

The petitioner reiterated her version in her duly sworn affidavit Ex. PW1/A. She was subject to lengthy cross examination but nothing tangible and material has been brought on record that she is living in adultery with Ashok. Her mother Panmeshwari was examined to corroborate her version that since 24.8.2012, the petitioner is residing at her parental home with her mother. Panmeshwari tendered into evidence her affidavit Ex. PW2/A. She was not subject to cross examination, therefore, her testimony remains unchallenged. The petitioner also examined one official witness EHC Bal Kishan who produced on record certain documents which are merely marked but not exhibited. One of the

documents brought on record is the application dated 10.9.2012 submitted by Kavita, daughter of Sanjay complainant against Sanjay and others that she was being pressurized to depose against her mother in respect of occurrence dated 25.8.2012.

Sanjay appeared in the witness box and reiterated his version. He has not narrated even a single incident when he had seen the petitioner indulging in sexual relationship with Ashok nor substantiated his plea that the petitioner is living in adultery.

The question now arises, whether testimony of Kavita that she had seen Ashok and the petitioner in a compromising position can suffice to hold against the petitioner that she is living in adultery with Ashok.

Kavita has deposed that on 8.9.2012 her cousin took her to village Satroad where her mother was residing in the house of her sister. After some days, her mother took a separate room in Chhoti Satroad and she was also living with her mother. One night, Ashok came to their house and she saw him in compromising position. Thereafter, she came to village Khanak and narrated the whole story to her father. No date, month or year of the said occurrence has been mentioned by Kavita. The petitioner in her cross examination has categorically denied that she had taken a room/house on rent in village Chhoti Satroad or she was residing there. Further she has categorically deposed that she stayed with her sister in village Satroad for a day or two.

Kavita is admittedly residing with her father. The family belongs to lower middle class as father is working on a brick kiln. There is no challenge to testimony of Panmeshwari that the petitioner had been

residing with her mother since she left her matrimonial home on 24.8.2012. Sanjay has admitted receipt of injuries by the petitioner though with the plea that she received injuries when he tried to bring her back after she left the house with Ashok and Bharat. Admittedly, no challan was presented against the petitioner for causing injuries to Sanjay on 24/25.8.2012. Sanjay filed private complaint even raising allegations constituting offence under Sections 497, 498 IPC. After recording preliminary evidence, the accused has not been summoned for offence under Sections 497, 498 IPC, therefore, version of the respondent that the petitioner is living in adultery has not been accepted by the Court even at the back of the petitioner. Taking a cumulative view of the entire evidence on record, I find it difficult to record a finding against the petitioner that she is living in adultery, thus, disentitle herself to get maintenance from her husband. As a consequence, finding recorded by the trial court denying right of maintenance to the petitioner cannot be affirmed and liable to be set aside.

This brings the Court to quantum of maintenance payable to the petitioner. There is no material on record that the respondent-husband is owning any land or getting a salary of Rs. 20,000/- per month. As has been noticed hereinbefore, the family belongs to poor strata of society. The respondent has an obligation to look after four children born out of the wedlock. Even if the respondent is working as a labourer on a brick kiln, he, at best, would be earning Rs. 10000 -12000 per month. Taking into consideration liability of the respondent to maintain four children of the parties, in my considered opinion, ends of justice would be served if the petitioner is allowed maintenance at the rate of Rs. 700/- per month. The

maintenance shall be payable from the date of order passed by the trial court i.e. 14.7.2014 as the respondent, in view of his financial status and liability towards children may not be in a position to pay arrears of maintenance from the date of application filed in September 2012.

For the foregoing reasons, the petition is allowed in the aforesaid terms.

(Rekha Mittal)
Judge

24.3.2017
paramjit

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