

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

**CRR(F)-280-2015 (O&M)
Date of Decision : 20.09.2017**

Neha Verma & Another

...Petitioners

Versus

Gaurav Verma

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Suresh Ahlawat, Advocate
for the petitioners.

Mr. J. S. Cooner, Advocate
for the respondent.

JAISHREE THAKUR, J.

The instant revision petition has been filed under Section 401 Cr.P.C. against the order dated 04.09.2015 passed by the District Judge (Family Court), Ambala, wherein the maintenance of Rs. 4,000/- per month was awarded to the petitioners herein in equal share.

In brief, the facts are that a petition under Section 125 Cr.P.C. was initiated by petitioner No. 1 Neha Verma at her behest and on behalf of her minor child (petitioner No. 2 herein) seeking maintenance. It was alleged that a marriage took place between the parties on 20.04.2008. Out of this wedlock, one male child was born on 04.11.2010. On account of cruelty and physical abuse, the petitioners started residing separately. Requiring maintenance for herself and her minor child, she prayed for grant of maintenance of Rs. 15,000/- per month besides litigation expenses. The

District Judge (Family Court), Ambala, by the impugned order dated 04.09.2015, awarded maintenance @ Rs. 2,000/- per month, each to the wife and minor child. Aggrieved against the said amount, the instant petition has been filed seeking enhancement of the same.

Learned counsel appearing on behalf of the petitioners argues that the respondent is working as Signal Man in Indian Army and as per the current statement of account for the month of April, 2017, his total salary is Rs. 43,135/-, out of which Rs. 28,435/- is being credited to his bank account per month. Hence, the maintenance as awarded by the District Judge (Family Court), Ambala should be enhanced.

Per contra, learned counsel for the respondent submits that the amount of Rs. 4,000/- has rightly been assessed as monthly maintenance to the petitioners. It is also submitted that the petitioner herein is qualified and capable of maintaining herself and the minor child while praying for dismissal of the petition.

I have heard learned counsel for the parties and have also perused the impugned order as well as the statement of salary of the respondent for the month of April, 2017.

There is no dispute about the legality of the marriage between the parties neither is it in dispute that the respondent herein is father of the minor child. The only contention that has been raised is that the petitioner is residing separately and is qualified enough to maintain herself and, therefore, no liability can be fastened upon the respondent. This argument is without any substance and is liable to be rejected at the very outset. The provisions of Section 125 Cr.P.C. are to prevent wife from vagrancy and destitution. The legal position regarding maintenance payable under Section

125 Cr.P.C. is detailed in ***Chaturbhuj Vs. Sita Bai, 2008 (2) SCC 316***. As per provisions of Section 125 Cr.P.C., the expression '*unable to maintain herself*' has to be read as distinct from the term '*is capable of earning*'. Moreover the wife would also be entitled to a similar standard of living as she would have been residing with her husband. In the judgment rendered in ***Bhagwan Dutt Vs. Kamala Devi, AIR 1975 SC 93***, the Hon'ble Supreme Court has held that "*The wife should be in a position to maintain a standard of living which is neither luxurious nor penurious but what is consistent with status of family. The expression 'unable to maintain herself' does not mean that the wife must be absolutely destitute when she applies for maintenance under Section 125 Cr.P.C.*" Furthermore, in ***Minakshi Gaur Vs. Chiranjay Gaur, AIR 2009 SC 1377***, the Hon'ble Supreme Court has held to the extent that even if the wife is earning, but if her earning is insufficient and the husband has substantial salary then he is liable to pay maintenance to his wife.

Admittedly, the minor child was born on 4.11.2010 and is studying consequently and this would require adequate means for his education and his well being, as would the petitioner-wife. The respondent herein admittedly is earning a gross salary of Rs. 43,135/- in the Pay Band of Rs. 10,170/- with Grade Pay of Rs. 2400/-. the actual amount that is being credited in his account monthly is Rs. 28,435/-. Persons, serving in the Indian Army, are also entitled to free rations every month, which this Court can take judicial notice of. Also, it can safely be assumed by this Court that the respondent apart from having gross salary of Rs. 43,135/- is also availing of free rations. Therefore, the maintenance of Rs. 4,000/- per month that has been awarded to the petitioners is held to be on the lower

side.

In view of above, the instant petition is allowed and the impugned order is modified. The question of enhancement has to be decided and there can be no strict formula adopted in assessing the same. There is nothing on the record to show that the wife is earning or has an independent source of income. The stand of the respondent was falsified that the petitioner was teaching in a school. The respondent at the moment does not seem to have any other liability nor has the same been pleaded. Therefore, the maintenance amount is enhanced and it is hereby directed that respondent-husband Gaurav Verma shall pay the maintenance of Rs. 16,000/- per month to the petitioners i.e Rs. 8,000/- per month to petitioner No. 1 and Rs. 8,000/- per month to petitioner No. 2. The enhanced maintenance is to be paid from the date of filing of the instant revision petition.

20.09.2017
Ansari

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No