

CRR-89-2016

Date of decision: 06.11.2017

Ashok Kumar

.....Petitioner

versus

Poonam Devi and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL**Present:** Ms. Mannat Anand, Advocate
for the petitioner.Mr. Ashit Malik, Advocate
for the respondents.**LISA GILL, J. (ORAL)**

The petitioner is aggrieved of order dated 20.08.2015 passed by the learned Additional Sessions Judge, Panipat whereby interim maintenance under Section 125 Cr.P.C. to the respondents has been enhanced from Rs.1,500/- each to Rs,4,000/- per month each.

Facts necessary for the adjudication of this petition are that the respondents i.e. the wife and the minor child of the petitioner filed a petition under Section 125 Cr.P.C. seeking maintenance being legally wedded wife and minor child of the petitioner. It was averred that both of them were turned out of the matrimonial home by the present petitioner on account of respondent No.1 bringing less dowry. The respondents pleaded that they did not have any source of income, whereas, the present petitioner being an able bodied person earning Rs.40,000/- per month, was liable to maintain them.

The learned trial Court while deciding the application for interim maintenance directed a sum of Rs.1,500/- per month to be paid to each of the respondents. Aggrieved by the meagre sum assessed, the respondents preferred a revision petition.

Learned Additional Sessions Judge, Panipat vide impugned order dated 20.08.2015 while taking into account the salary certificate, bank statement and income tax returns of the present petitioner enhanced the amount of interim maintenance from Rs.1,500/- each to Rs.4,000/- each. Another sum of Rs.4,000/- was directed to be paid as litigation expenses.

The petitioner aggrieved from the said enhancement has filed the present revision petition. While referring to Annexure P-4, learned counsel for the petitioner argues that the petitioner had submitted his resignation from his job with Star Wood Contracts Pvt. Ltd., Delhi. His resignation was duly accepted as reflected in the experience certificate dated 31.01.2014 (Annexure P-1). Therefore, once the petitioner resigned from his job, it can no longer be said that he was earning a sum of Rs. 39,000/- per month. It is vehemently argued that the petitioner is still unemployed having no source of income whatsoever. Therefore, the enhanced interim maintenance is liable to be reduced.

Learned counsel for the respondents denies that the petitioner does not have any source of income. It is submitted that the petitioner cannot be absolved of his duty to maintain the respondents on the ground that he has voluntarily resigned from his service. It is further submitted that the petitioner has solemnized second marriage with one Monika Sharma d/o Raj Kumar Sharma in an illegal fashion without even securing divorce from respondent No.1. FIR No.823 dated 26.10.2013 under Sections 323/498-A/406/494 IPC stands registered against the petitioner at Police Station Chandani Bagh, District Panipat. A child was also born out of the second marriage solemnized by the petitioner on 11.11.2015.

Learned counsel for the respondents has produced photocopies of FIR No.823 dated 26.10.2013; marriage certificate dated 03.09.2013 as well as birth certificate dated 07.01.2016 in respect to a child born to Ashok Kumar (petitioner) and Monika at Civil Hospital, Gurgaon wherein address of the parents is mentioned to be Narwana, District Jind, Haryana. It is urged that the petitioner is deliberately concealing his source of income only in order to avoid payment of maintenance to the present respondents whom he is liable to maintain. The respondents, it is stated have no source of income to make their two ends meet. It is thus prayed that this petition be dismissed.

I have heard learned counsel for the parties and with their able assistance, have gone through the file as well as documents produced in the Court today.

Marriage between the parties as well as birth of the minor child is not in dispute. A perusal of the resignation letter Annexure P-4 does not reveal any substantial reason for submission of the said resignation. The experience certificate Annexure P-1 issued by the petitioner's employer, certifies the petitioner to be hard working, diligent and honest in performance of his duties. There is no indication that the petitioner was forced to resign from service as is sought to be projected. There is nothing on record or even an averment, as to how the petitioner is making two ends meet since his resignation in January, 2014. In the present factual matrix prayer of the petitioner to reduce the interim maintenance to Rs.1,500/- each, which he would regularly pay is not justified. It is a settled principle of law

that the husband being an able bodied man, cannot take shelter on the plea of not having a source of livelihood to escape from his responsibility to maintain his wife and child. Reference in this regard can be gainfully made to the decision of the Hon'ble Supreme Court in Shamima Farooqui versus Shahid Khan, 2015 (5) SCC 705.

Moreover, pendency of FIR No.823 dated 26.10.2013 is not denied, though learned counsel for the petitioner submits that false averments regarding second marriage and the birth of the child have been raised by the respondents.

Be that as it may, keeping in view the peculiar facts and circumstances of the case, I do not find any ground to reduce the interim maintenance of Rs.4,000/- each to be paid to the respondents.

Needless to say the amount in question can always be adjusted at the time of final adjudication after the learned trial Court has had the occasion to consider the entire evidence led by both the parties.

Keeping in view the fact that the matter has been pending since 2013, it is directed that the petition under Section 125 Cr.P.C. be decided by the learned trial Court within four months from the date of receipt of certified copy of this order.

This petition is accordingly dismissed.

(LISA GILL)
JUDGE

06.11.2017

Neha

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No