

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

**CRR(F) No.22 of 2016 (O&M)
Decided on: 05.05.2017**

Naresh Kumar

....Petitioner

Versus

Babita Sharma and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Saajan Singla, Advocate
for Mr. Manu K. Bhandari, Advocate
for the petitioner.

Mr. Sunny Singla, Advocate
for the respondents.

REKHA MITTAL, J.

CRM No.2637 of 2016

Prayer in this application is for condoning delay of 200 days in filing the revision petition.

Heard.

In view of averments made in the application supported by an affidavit of Naresh Kumar @ Jolly, the applicant-petitioner, the application is allowed and delay of 200 days in filing the revision petition stands condoned.

CRR(F) No.22 of 2016

The present petition directs challenge against order dated 09.02.2015 passed by the District Judge (Family Court), Ambala whereby the respondents have been allowed maintenance under Section 125 Cr.P.C.

As per the averments set up by the respondents, the petitioner and respondent No.1 performed marriage on 15.10.1997 at Ambala City. Out of the wedlock, two daughters Nancy Sharma and Parbi Sharma were born on 21.11.1998 and 13.05.2011 respectively. The respondent – wife was insulted for bringing substandard goods in marriage. The petitioner is a drug addict and alcoholic. He used to give merciless beatings to the respondent. He was admitted in the hospital on number of occasions due to consumption of huge quantity of alcohol and drugs. After birth of the second daughter, the petitioner and his family members started abusing her. On 25.12.2011 she was beaten in a barbaric way and turned out of the matrimonial home along with the daughters and since then she is residing at her parental house.

The petitioner is running a flour mill, carrying on the business of property dealing and earning Rs.35,000/- per month. The respondents claimed Rs.25,000/- per month for maintenance besides litigation expenses.

The petitioner filed reply and in turn controverted the allegations with regard to respondent No.1 having been maltreated as alleged. It is averred that to satisfy desire of the respondent – wife to go abroad, the petitioner took her to England in the year 2005 by taking loan and had not recovered from the debt. He has denied that he is running a flour mill and carrying on business of property dealing with the averment that he is working as a driver on daily wages of Rs.300/- per day.

When the case was fixed for evidence of the respondents

and payment of interim maintenance granted by the trial Court, the petitioner absented from the proceedings and was proceeded against ex parte vide order dated 20.02.2014. Later, an application moved by the respondent for setting-aside ex parte proceedings, the ex parte proceedings were set-aside vide order dated 14.10.2014 but subject to payment of arrears of interim maintenance. The petitioner failed to pay arrears of interim maintenance and resultantly the application for setting-aside ex parte proceedings was dismissed.

To prove her case, respondent No.1 appeared in the witness-box and tendered into evidence her affidavit Ex.PW1/A, reiterating her version narrated in the petition. The petitioner could not adduce any evidence as he remained ex parte for want of payment of arrears of interim maintenance.

The sole submission made by counsel for the petitioner is that maintenance assessed by the Court below @ Rs.8,000/- per month i.e. Rs.4,000/- to respondent No.1 and Rs.2,000/- each to the daughters is on higher side and liable to be reduced. It is further submitted that income of the petitioner assessed by the trial Court @ Rs.25,000/- to 30,000/- per month is the result of surmises and conjectures, therefore, the order passed by the Court below requires to be modified. In addition, it is argued that there is no material on record to substantiate plea of respondent No.1 that the petitioner is running a flour mill or involved in the business of property dealing much less earning Rs.35,000/- per month as claimed.

Counsel for the respondents, on the contrary, has supported

the impugned order with the submission that the petitioner being the husband and father of two minor girls cannot escape his liability to provide adequate maintenance to his family. It is argued that as the petitioner did not adduce any evidence to counter the statement made by respondent No.1 on oath, no interference in the impugned order is warranted.

I have heard counsel for the parties and perused the paperbook.

Before advertng to the submissions made by counsel for the parties, it would be appropriate to note that there is no challenge to the findings of the trial Court that the respondent – wife was maltreated by the petitioner – husband and she along with two minor children born out of the wedlock was turned out of the matrimonial home and are living at the mercy of parents of respondent No.1. The petitioner refused to pay interim maintenance and opted to be proceeded against ex parte with a clear intent to avoid payment of maintenance. This conduct of the petitioner speaks volumes about his sense of responsibility to look after his minor daughters even if he had any grievance to express against his wife.

The trial Court has awarded maintenance @ Rs.4,000/- per month for the wife and Rs.2,000/- each per month for the minor children. One daughter is more than 18 years of age and the younger one is 06 years old. The maintenance awarded by the Court below may not be sufficient to meet daily needs of three and expenses on education of the children what to talk of providing them clothes, housing and

comforts. Once the petitioner had decided to get married and produce children, he cannot avoid his liability to pay adequate maintenance to his family by raising a plea that he is merely a driver earning Rs.300/- per day. The petitioner being the husband and father of two is obligated to create sources and earn sufficient income for providing adequate maintenance to his family. The provisions of Section 125 Cr.P.C. were framed by the legislature with an avowed object to provide succour to a destitute wife, neglected children and parents. As has been rightly argued by counsel for the respondent, there is no challenge to testimony of the wife on oath, therefore, the petitioner cannot be heard to say that he does not have that much income as pleaded by the wife. Analyzed from any angle, I do not find any error much less illegality in the impugned order that would call for intervention in exercise of revisional jurisdiction.

For the foregoing reasons, the petition fails and is accordingly dismissed.

05.05.2017
yakub

(REKHA MITTAL)
JUDGE

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