

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

**CRR(F) No. 32 of 2016
Date of decision: 17.04.2017**

Baljeet

..... Petitioner.

Versus

Suman @ Bala and another

..... Respondents.

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Tara Chand Dhanwal, Advocate for the petitioner.

Mr. Ajit Sihag, Advocate, for the respondent.

LISA GILL, J.

The petitioner prays for setting aside order dated 26.10.2015, passed by the learned District Judge (Family Court), Hisar, whereby a sum of ₹ 3,000/- per month and ₹ 1,000/- per month has been assessed as maintenance to be paid to respondent No. 1-his wife and respondent No. 2-his daughter, respectively.

The respondents had filed an application under Section 125 of the Code of Criminal Procedure (for short 'Cr.P.C'), claiming maintenance @ ₹ 12,000/-per month; besides litigation expenses of ₹ 11,000/-.

As per the averments in the said petition, marriage between the petitioner and respondent No. 1 was solemnized in June, 2008 and a child (respondent No.2) was born out of this wedlock. However, respondent No. 1 was harassed on account of insufficient dowry. She was thrown out of matrimonial home six or seven times. Number of *Panchayats* were convened. She was often sent back to the matrimonial home but the petitioner would again resort to physical and mental humiliation without any reasonable excuse, especially under the influence of liquor. Respondent No.1 performed all her matrimonial duties. The petitioner thereafter raised a demand of ₹ 40,000/- from her parents and on inability to fulfill the

demand, she was thrown out of the matrimonial home. As per the averments the petitioner, an able bodied person was working in a private factory and earning more than ₹ 12,000/- per month. He was also engaged in the business of sale and purchase of buffaloes, earning an additional sum of ₹ 8,000/- per month. The petitioner, it is averred was also getting a share in the pension of his father, who retired from the Electricity Department. The petitioner owned a residential house as well as 2/3 plots of high value. He was divorced from his first wife on 25.11.2008.

The allegations were refuted by the petitioner. It was averred that the petitioner was working in a private factory on a meagre salary of ₹ 5,642/-. It was denied that he was having income from any other source.

Evidence was led by the parties. The learned District Judge, Family Court, Hisar on considering the entire facts and circumstances of the case assessed the amount of maintenance payable to the respondent-wife @ ₹ 3,000/- per month and ₹ 1,000/- per month for the minor child from the date of filing of the application. No litigation expenses were awarded.

Learned counsel for the petitioner vehemently argues that the petitioner was earning a meagre sum of ₹ 5,642/- per month as salary. He does not have any income from any other source. The petitioner additionally has to maintain three children from his first marriage. Therefore, the amount awarded by the learned District Judge, Family Court, Hisar is excessive. Reference is made to an alleged salary slip issued by the employer of the petitioner. It is stated that a specific stand in this regard had been taken by the petitioner before the learned District Judge, Family Court, Hisar and this fact has been wrongly ignored while assessing the maintenance due towards the respondents.

Therefore, the said amount should be reduced.

Learned counsel for the respondents while refuting the above said arguments submits that the petitioner has not tendered a single penny since the passing of the impugned order on 26.10.2015. The evidence on record further proves that the maintenance assessed is not excessive or exorbitant. Therefore, this petition should be dismissed.

I have heard learned counsel for the parties and have gone through the file with their assistance.

It is not in dispute that the document annexed as Annexure P-1 with this petition is not an exhibit before the learned District Judge, Family Court, Hisar. The petitioner has not placed on record a copy of the reply submitted by him before the learned District Judge despite a specific order of this Court passed on 08.02.2016. A perusal of the impugned order dated 26.10.2015 passed by the learned District Judge, Family Court reveals that it is specifically observed that no proof of his income being less than what has been averred by the wife has been brought forth by the petitioner. A bald averment has been made that he is earning a salary of ₹ 5,642/- per month. It is observed by the learned District Judge that now a days even a labourer can earn ₹ 10,000/- per month. Therefore, the amount of maintenance as mentioned above has been assessed. Reliance by the petitioner on a document admittedly not exhibited before the learned trial Court and simply annexed with the present revision petition is of no avail to him. The Hon'ble Supreme Court in ***Shamima Farooqui Vs. Shahid Khan (2015) 5 SCC 705*** has held that if the husband is able bodied, it is his duty to maintain his wife and children. Financial constraints cannot be pleaded to non-suit the wife and children.

Learned counsel for the petitioner had sought time on 19.01.2017

to seek instructions in respect to the averments of the respondents that not a

single penny had been paid. It is not denied that the petitioner has not paid any amount towards the maintenance assessed by the learned District Judge till date.

Keeping in view the facts and circumstances of the case, I do not find that the maintenance awarded to the respondents is excessive in any manner. Furthermore, the petitioner has not tendered even a part of the maintenance amount assessed in October 2015. No interim order in his favour is on record. Thus the petitioner's conduct further disentitles him from any relief or indulgence from this Court.

Learned counsel for the petitioner is unable to point out any infirmity, illegality or perversity in the impugned order dated 26.10.2015, which calls for interference by this Court in exercise of its revisional power. This revision petition is, accordingly, dismissed.

(LISA GILL)
JUDGE

17.04.2017
PA

Whether speaking/reasoned : *Yes/No.*

Whether reportable : *Yes/No.*