CMM-80-2016 and
FAO-M-380-2015

AMANJOT SINGH
VS.
RAJWANT KAUR

Present: Ms. Seema Arora, Advocate
for the appellant.

Mr. Piyush Kant Jain, Advocate
for the applicant-respondent.

<u>CMM-80-2016</u>

Respondent-wife moves this application invoking the provisions under Section 24 and Section 26 of the Hindu Marriage Act, 1955, praying for maintenance *pendente lite* for herself and for the minor daughter aged about seven years.

The fact remains that the respondent filed a petition under Section 125 Cr.P.C. before the learned Judicial Magistrate 1st Class, Ludhiana, seeking interim maintenance. A sum of ₹2,000/- per month towards maintenance for the respondent and a sum of ₹1,000/- per month towards maintenance of minor daughter were fixed by the learned Judicial Magistrate 1st Class, Ludhiana.

It is contended by the respondent-wife that the said amount fixed by the learned Judicial Magistrate 1st Class, Ludhiana, is highly inadequate and insufficient to maintain herself and her daughter. It has been contended that the appellant-husband is a man of means carrying on the business of manufacture/export and sale of bicycles, hub bicycles, bicycles spare parts etc. under the name and style of Indian Enterprises, having factory at Janta Nagar, Ludhiana. It was also contended that appellant-husband is doing the said business along with his elder brother Sarabjot Singh. Having thus contended that the appellant-husband is earning not less than a sum of ₹50,000/- per month from out of the said business, respondent-wife has sought a sum of ₹25,000/- per month towards maintenance for herself and her daughter.

Appellant-husband filed reply refuting the allegation that he is carrying on a business of manufacture/export. It is only his brother who is having a factory. Appellant is helping his brother in the factory. It was contended by the appellant that he is getting a salary of ₹5,500/- per month as an employee of his brother. It was further contended that the respondent-wife is a graduate and is taking tuition at her home and thereby she earns a sizeable income to maintain herself and her minor daughter.

Counsel appearing for the respondent-wife, who filed the present application, submitted that appellant-husband has come out with a lie that he is only an employee in the factory run by his brother. The fact remains that the appellant is contributing to a larger extent to his brother, who is running the factory. He also submitted that it is quite unbelievable that the appellant has been employed by his own brother in the factory at a salary of ₹5,500/- per month which is far below the minimum wages. It is further submitted that a sum of ₹25,000/- per month is required to maintain the respondent and her daughter, who is a school going girl, studying in Class II.

Counsel for the appellant-husband submitted that there is no evidence to establish that the appellant is a partner of the manufacturing unit run by his brother. It is her submission that the appellant has produced his salary certificate to establish that he is earning only a sum of ₹5,500/- per month. Further, it is her submission that the respondent-wife, who is a graduate, has the capacity to maintain herself by conducting tuition.

On the basis of the contentions raised by the respondent-wife, we directed the brother of the appellant to be present before the Court and produce relevant records to show the ownership of the manufacturing unit. Documents were produced for our perusal. We find that appellant's brother is running a proprietorship concern. But appellant has contended, based on the salary certificate produced, that he is earning only a sum of ₹5,500/- per month. Even if a person is employed in a company which is run by a stranger, such a company is bound to pay the minimum wages to its employees. Appellant is none other than the brother of Sarabjot Singh, who is running the enterprise in the name and style of Indian Enterprises, Ludhiana. It is quite unbelievable, as rightly contended by the counsel appearing for the respondent-wife, that the brother of the appellant is giving only a salary of ₹5,500/- per month which is far below the minimum wages to the appellant, who is contributing to his business. In other words, in our considered view, the salary certificate disclosing that the appellant is drawing only ₹5,500/- per month from company, namely, Indian Enterprises run by his brother, is a cooked up one for the purpose of this case.

Considering the enterprise in which the appellant is serving and the relationship of the appellant with the proprietor of the said concern, we are of the considered view that the appellant will be receiving not less than ₹20,000/- per month from the said enterprise.

There is no evidence forthcoming from the appellant to establish that the respondent-wife is taking tuition and thereby, she earns her livelihood. It is demonstrated by the respondent-wife that she is a housewife.

The child born out of the wedlock is now seven years and is studying in 2nd standard.

Considering the resourcefulness of the appellant, the requirement of the respondent-wife and her daughter, who is a school going girl, we are of the considered view that a sum of ₹5,000/- per month towards maintenance of the respondent and a sum of ₹2,500/- per month towards the maintenance of the daughter born out of the wedlock, would take care of their needs.

In view thereof, we direct the appellant to pay a sum of ₹5,000/- per month towards maintenance *pendente lite* for the wife and a sum of ₹2,500/- per month towards maintenance for the daughter from 16.05.2016 i.e. the date on which the present application had been filed. The above maintenance awarded is inclusive of the amount already awarded by the learned Judicial Magistrate 1st Class, Ludhiana, under Section 125 Cr.P.C.

With the above directions, the application stands disposed of.

FAO-M-380-2015

Adjourned to 06.09.2017.

(M. JEYAPAUL)
JUDGE

February 2nd, 2017 **(AUGUSTINE GEORGE MASIH)**
Puneet **JUDGE**