

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

CRM-M-13922-2015

Date of decision:-19.7.2018

Dhiraj Malhotra

...Petitioner

Versus

Ritu Malhotra and another

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Ms.Ranjana Shahi, Advocate
for the petitioner.

Ms.G.K. Mann, Advocate
for the respondents.

H.S. MADAAN, J.

Mrs.Ritu Malhotra - estranged wife and Ms.Tanya Malhotra – minor daughter of Dhiraj Malhotra had brought a petition under Section 125 Cr.P.C. for grant of maintenance, which after contest was allowed by Judicial Magistrate Ist Class, Chandigarh vide order dated 9.6.2014 granting maintenance @ Rs.5,000/- per month for Mrs. Ritu Malhotra and Rs.15,000/- per month for Ms.Tanya Malhotra payable by Dhiraj Malhotra from the date of filing the application.

Feeling aggrieved by the said order, Dhiraj Malhotra had preferred a revision petition, which was dismissed by learned Additional Sessions Judge, Chandigarh vide order dated 20.3.2015.

Dhiraj Malhotra has now approached this Court by way of filing a petition under Section under Section 482 Cr.P.C. seeking quashing of the orders passed by the Courts below.

Notice of the petition has been given to respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The first and foremost question to be seen is as to whether grant of maintenance to Mrs.Ritu Malhotra by the Courts below is justified in light of the fact that she has been working as a Teacher in a Government school getting monthly salary besides having government accommodation. In para No.12 of the order passed by learned Magistrate, it is observed that it stands proved that petitioner No.1 (Mrs.Ritu Malhotra) is a earning hand and drawing sufficient income adding that still it is the duty of the respondent being a husband to maintain his wife. In the later part of para No.13, it is mentioned that the present salary of petitioner – Ritu Malhotra is Rs.47,170/-. Whereas regarding income of the respondent in absence of any documentary evidence, the same has been taken to be Rs.56,262/-.

Under the circumstances, whether Mrs.Ritu Malhotra being highly educated having done Masters in Chemistry with qualification of B.Ed. serving in a Government school drawing salary of Rs.47,170/- and in possession of Government accommodation can be said to be unable to maintain herself, the answer has to be in negative. Both the Courts below have lost sight of this fact and by adopting erroneous approach based on emotions and sentiments have observed that Dhiraj Malhotra

being husband of Ritu Malhotra is liable to pay maintenance to her. Things would have been different, if Ritu Malhotra was idle having no source of income to meet her needs but here the situation is otherwise.

Section 125 Cr.P.C. clearly provides that a husband is liable to maintain his wife, who is unable to maintain herself. The essential ingredient is inability of the wife to maintain herself, which in this case is certainly missing. Ignoring the same, the Courts below have wrongly held that Ritu Malhotra is entitled to get monthly maintenance allowance from her husband Dhiraj Malhotra.

No doubt, Tanya Malhotra being minor daughter of Dhiraj Malhotra is entitled to get monthly maintenance allowance from her father, though she is residing with her mother Ritu Malhotra, who is bringing her up by spending money from her side but then as has come on the record, Dhiraj Malhotra has been paying interim maintenance for Tanya Malhotra and as per agreement arrived at between Dhiraj Malhotra and Ritu Malhotra in this regard, a sum of Rs.10,000/- per month since the year 2009. The girl is growing up and considerable amount is required for her food, clothing, education, health care and for other facilities. Considering the salary of the respondent taken as Rs.56,262/-, the trial Magistrate has rightly granted maintenance of Rs.15,000/- per month to her, which has been affirmed by learned Additional Sessions Judge, Chandigarh. This amount can certainly be not termed to be excessive or on higher side when we find that things of even basic needs are getting very costly day by day besides that education and health care are also getting very expensive.

Under the circumstances, the impugned orders are not

sustainable with regard to grant of monthly maintenance allowance to Ritu Malhotra and in my view keeping in view the fact that Dhiraj Malhotra has been giving interim maintenance for his daughter Tanya Malhotra, during the pendency of the petition under Section 125 Cr.P.C., the maintenance allowance @ Rs.15,000/- ought to be granted to her from the date of order. As has been pointed out by learned counsel for the petitioner, if the application is allowed and maintenance is awarded from the date of application i.e. from the year 2005 then at that time, the salary of petitioner was only Rs.20,512/- and after deducting Rs.15,000/-, he would be left with only Rs.5,512/-. This contention needs to be given due attention and consideration.

Accordingly, I find that the orders passed by the Courts below need to be modified so as to grant of maintenance to Tanya Malhotra @ Rs.15,000/- per month from the date of passing order by the Magistrate and not from the date of filing of application. It is clarified that the amount paid by respondent to Tanya Malhotra on account of interim maintenance during pendency of petition under Section 125 Cr.P.C. is left as such without any interference.

Learned counsel for the respondents has referred to citation *Vijay B. Verma Versus Sita Devi alias Sita Verma, 2014(1) R.C.R.(Civil) 1018* by a Co-ordinate Bench of this Court in support of her contention that the maintenance awarded cannot be said to be on higher side but then that case had different facts where the husband owned a 4 Star hotel and also had income from other business. In the present case, the husband is found to be in employment and presently earning Rs.56,262/- per month. Therefore, this authority does not help

the respondents much. Learned counsel for the respondents has further referred to authority *Satish Kumar Versus Kamaljit Kaur and another, 2015(3) R.C.R.(Criminal) 829* by a Co-ordinate Bench of this Court. There cannot be any dispute with the ratio of that authority wherein it was observed that the concept of maintenance in India is covered under Section 125 of the Code as well as under personal law and the maintenance includes entitlement to food, clothing and shelter to the wife, children and parents, further dilating that this is provided as a measure of social justice and natural duty of a husband to maintain his wife and children when they are unable to maintain themselves. However, the observations clarify the matter that for claiming maintenance a wife should be unable to maintain herself, whereas it is not so in the present case.

Therefore, the petition is allowed and the impugned orders passed by the Courts below are modified to the extent that application for grant of maintenance to Ritu Malhotra @ Rs.5,000/- from the date of filing of the application is dismissed to that extent. Whereas with regard to Tanya Malhotra, the maintenance allowance @ Rs.15,000/- per month is to be paid by Dhiraj Malhotra (herein petitioner) from the date of order by Judicial Magistrate Ist Class, Chandigarh.

(H.S.MADAAN)
JUDGE

19.7.2018

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No