

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

(1)

**Crl. Misc. M-16418 of 2014 (O&M)
Date of Decision: March 19, 2018**

Moti Ram

...Petitioner

Versus

Monika and another

...Respondents

(2)

Crl. Misc. M-16420 of 2014 (O&M)

Moti Ram

...Petitioner

Versus

Monika and another

...Respondents

(3)

Crl. Misc. M-22314 of 2014 (O&M)

Monika and another

...Petitioners

Versus

Moti Ram

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Munish Bhardwaj, Advocate
for the petitioner in CRM-M-16418 of 2014 and
CRM-M-16420 of 2014 &
for the respondent in CRM-M-22314 of 2014.

Mr. Rajesh K. Kataria, Advocate
for the petitioner in CRM-M-22314 of 2014 &
for the respondent in CRM-M-16418 of 2014 and
CRM-M-16420 of 2014.

JAISHREE THAKUR, J.

By this order, this court proposes to dispose of above captioned three petitions i.e. *CRM-M-16418 of 2014 and CRM-M-16420 of 2014 both titled as "Moti Ram vs. Monika and another"* and *CRM-M-22314-2014 titled as "Monika and another vs. Moti Ram"* as they arise out of a common order dated 31.03.2014 passed by learned Additional Sessions Judge, Panchkula..

2. For the sake of convenience, the facts are being taken from CRM-M-16418 of 2014 and the parties would be taken in this order, as they are mentioned in CRM-M-16418 of 2014 (hereinafter Moti Ram referred to as 'the petitioner'). The petitioner has preferred the present petition for setting aside the order dated 06.11.2012 passed by CJM, Panchkula in Criminal Case No.32 of 2004 titled as *Smt. Monika and others vs. Moti Ram*, as well as order dated 31.03.2014 passed by Addl. Sessions Judge, Panchkula in CRR No.131 of 2013 titled as *Smt. Monika and another vs. Moti Ram* to the extent that the maintenance awarded to the minor child-respondent No.2 has been upheld and enhanced from Rs.4000/- to Rs.5000/- per month. Whereas respondent no 1-Monika (hereinafter respondent No.1-Monika referred to as 'respondent No.1') has challenged the same order seeking enhancement of maintenance.

3. In brief, the facts are that a marriage was solemnized between the petitioner and respondent No.1 on 09.02.2001, according to Hindu rites and ceremonies. Out of this wedlock, a female child respondent No.2-Mimana was born on 10.07.2013. On account of matrimonial differences,

respondent No.1 left the matrimonial home on 02.03.2003 and went to reside in her parental home, where she gave birth to the minor child. A petition was preferred by respondent No.1 under Section 125 Cr.P.C. for grant of maintenance to herself as well as her minor child, along with an application for interim maintenance. Interim maintenance was allowed @ Rs.3000/- per month to respondent No.1 and @ Rs.1000/- per month to respondent No.2-child from the date of the application. During the pendency of the petition under Section 125 Cr.P.C., a compromise was arrived at between the parties on 29.07.2005, in which the parties decided to dissolve their marriage by mutual consent. It was further agreed that the petitioner was to pay a sum of Rs.2,75,000/- in lieu of permanent and future alimony of all types as full and final settlement and respondent No.1 herein agreed not to take anything from the petitioner and also agreed that she would not file any petition for her maintenance in the future. It was further agreed that minor daughter, respondent No.2, would reside with respondent No.1 and she would not claim any maintenance on behalf of the said child and would be responsible for her upbringing. In view of the compromise arrived at, a petition under Section 13-B of Hindu Marriage Act was filed and the married was dissolved by mutual consent through decree dated 03.08.2006 and paid a sum of Rs.2,75,000/- as agreed between the parties. However, respondent No.1 failed to withdraw the petition under Section 125 Cr.P.C. During the pendency of proceedings under section 125 Cr.P.C. respondent No.1 moved an application on 21.11.2006 to have the petition withdrawn on her behalf. Both the parties are re-married. By the judgment dated 06.11.2012, the CJM Panchkula, allowed the petition under Section

125 Cr.P.C. and granted maintenance @ Rs.2000/- per month to respondent No.1 and @ Rs.4000/- per month to respondent No.2-child. Aggrieved against the said order, the petitioner filed a revision petition before ASJ, Panchkula whereas, respondents filed a revision petition for enhancement of maintenance awarded, without disclosing the fact that respondent No.1 had re-married on 02.05.2008. By a common order dated 31.03.2014, the Additional Sessions Judge, Panchkula, partly allowed both the revision petitions of both the parties. In view of the fact that respondent No.1 re-married on 02.05.2008 and that by an order dated 21.11.2016, the petition of respondent No.1 was ordered to be dismissed as withdrawn, the claim of respondent No.1 was rejected. However, maintenance awarded to respondent No.2-child was enhanced from Rs.4000/- per month to Rs.5000/- per month from the date of filing of the petition. Aggrieved against the impugned order partly allowing both the revisions as well as the order dated 06.11.2012 passed by CJM, Panchkula, the petitioner has preferred two petitions bearing CRM-M-16418 of 2014 and CRM-M-16420 of 2014. Whereas, respondents have preferred a petition bearing CRM-M-22314 of 2014 against the common order dated 31.03.2014 passed in revision, seeking enhancement of maintenance to respondent No.2-child from Rs.5000/- to Rs.15,000/- per month from the date of filing of the petition as well as for enhancement of maintenance awarded to respondent No.1 till the date she get re-remarried.

4. Mr. Munish Bhardwaj, learned counsel appearing on behalf of the petitioner contends that respondent No.1 is not entitled to any maintenance, on account of the fact that she failed to disclose that she had

re-married, during the pendency of the proceedings under Section 125 Cr.P.C. She also failed to disclose that the marriage has been dissolved by way of mutual consent, in which it had been agreed that she would get a sum of Rs.2,75,000/- as full and final settlement of all disputes as well as maintenance and alimony. Learned counsel also argued that having re-married and having two female child from that second marriage, the amount of maintenance, as assessed and payable to respondent No.2-child is highly excessive, especially in view of the fact that at the time of the divorce and the compromise arrived at between the parties, it had been mutually agreed that respondent No.1 would maintain the minor child and would not claim any further maintenance for her upbringing.

5. Per contra, Mr. Rajesh K. Kataria, learned counsel appearing on behalf of respondent No.1 and respondent No.2-child submits that the maintenance awarded to the minor child is on the lower side as the minor child is growing and expenses for meeting her day-to-day living, food, clothing, education, is increasing on account of high index of cost of living. It is argued that maintenance amount awarded to respondent No.1, which was assessed @ Rs.3000/- per month as interim maintenance and subsequently decreased by the final order dated 06.11.2012 passed by CJM, Panchkula to Rs.2000/- per month, be enhanced to Rs.5000/- per month upto the date of her re-marriage.

6. I have heard learned counsel for the parties, apart from perusing the case files.

7. The following questions, arise out from these three petitions for consideration:-

- (i) Whether respondent No.1 is entitled to enhancement of interim maintenance, till the date she re-married and whether the order passed by Additional Sessions Judge, denying her maintenance is justified?
- (ii) Whether respondent No.2-minor child, born out of the wedlock of the petitioner and respondent No.1 is entitled to enhancement of maintenance to Rs.15,000/- per month, as claimed?

8. The first question, which requires consideration, is whether respondent No.1 is entitled to enhancement of interim maintenance, till the date she re-married and whether the order of Additional Sessions Judge, denying her maintenance is justified ? There is no dispute about the fact that a marriage was solemnized between the petitioner and respondent No.1. It is also not disputed that on account of matrimonial differences, the marriage between the parties was dissolved on 28.02.2006 by a decree of mutual consent under Section 13-B of Hindu Marriage Act. A compromise had been arrived at between the parties on 29.07.2005, in which it had been decided that a sum of Rs.2, 75,000/- would be handed over to respondent No.1 as full and final settlement of all disputes i.e. maintenance and alimony. After the decree of divorce obtained on 28.02.2006, both the petitioner and respondent No.1 are re-married. Respondent No.1 re-married on 02.05.2008. Even otherwise, by an order dated 21.11.2006, on the basis of statement made by her, the petition filed under Section 125 Cr.P.C. was ordered to be dismissed as withdrawn qua her. In view of these

circumstances, when respondent No.1 herself withdrew the petition under Section 125 Cr.P.C. qua herself, there was no occasion for the CJM, Panchkula to award maintenance even @ Rs.2,000/- per month to her. There being no infirmity in the finding of Additional Sessions Judge, Panchkula, the claim of respondent No.1 for enhancement of interim maintenance from Rs.3000/- per month to Rs.5000/- per month, till the date she re-married, is wholly unjustified and not sustainable. Therefore, first question is answered against respondent No.1.

9. The second question, which this court has to answer is whether respondent No.2-minor child, born out of the wedlock of the petitioner and respondent No.1 is entitled to enhancement of maintenance to Rs.15,000/- per month, as claimed. The CJM, Panchkula, while looking at the financial resources of the petitioner came to the conclusion that his carry home salary as Inspector in the Excise and Taxation Department, U.T., Chandigarh, is Rs.34,875/- per month and awarded maintenance @ Rs.4000/- per month to respondent No.2-minor child, which came to be enhanced by ASJ, Panchkula in revision to Rs.5000/- per month, from the date of the petition i.e. 09.09.2004. the contention of the petitioner that he had remarried with two minor daughters and aged parents was noted while enhancing the said maintenance.

10. Learned counsel appearing on behalf of the petitioner contends that the amount of Rs.5000/- per month awarded to respondent No.2-minor child is on the excessive side and in the alternative prays that the same should be made payable from the date of the order instead of from the date of filing of the petition. It is argued that once respondent No.1 entered into a

compromise not to claim any maintenance from the petitioner qua herself and the minor daughter, he is not liable to pay anything in this regard.

11. Learned counsel appearing on behalf of respondent No.2-minor child argues that the petitioner does not have to maintain his aged parents, since his father has independent source of income, having retired from the govt. service and drawing a basic pension of Rs.13,000/- per month. This argument is based upon information received under the RTI Act, 2005. It is further argued that the gross salary of the petitioner as on 31.03.2014 was Rs.52,970/- per month and now with the 7th Pay Commission, there would be enhancement in the same.

12. The question, whether the minor, could be precluded from claiming maintenance under Section 125 Cr.P.C. if the mother had already taken maintenance at the time of divorce, came up for consideration before this court in **Nirmal Singh vs. Gurvinder Kaur and others, 2008(1) RCR (Criminal) 970**, in which it has been held that even if a compromise had been effected in a petition under the Hindu Marriage Act and a lump-sum amount has been accepted by the mother on behalf the minor child, their independent right to claim maintenance under Section 125 Cr.P.C. could not be waived off, since the minor children were not party either to the compromise or to the petition under the Hindu Marriage Act and any statement made by the mother could not curtail their statutory right to claim maintenance under Section 125 Cr.P.C. Para 8 and 9 of the judgment are reproduced as under;

“8. I have perused the compromise (Ex.C1) today produced before me by the learned counsel for the

petitioner. It nowhere reflects that respondent No.3 has accepted the maintenance amount in full and final settlement on behalf of respondents No.1 and 2 also. The receipt attached with Exhibit C1 reflects that a lump-sum amount of Rs.70,000/- was accepted by respondent No.3 as her past as well as future maintenance at the time of disposal of Hindu Marriage petition. It is a case where respondents No.1 and 2 were not party in the Hindu Marriage petition. No interim maintenance was allowed to them in that petition. It is not the case of the petitioner that a petition under Section 26 of the Hindu Marriage Act was filed wherein any interim maintenance was fixed for the children. In the absence thereof also, statement of wife Manjit Kaur is of no value that she will maintain and educate the minor children.

9. The question of grant of maintenance of the children is governed by the statutes under the Hindu Adoptions and Maintenance Act, 1955. The plea of the petitioner is falsified from the receipt which forms part of compromise Ex.C1, which shows that n maintenance was ever accepted by their mother Manjit Kaur on their behalf. The question of making any statement by wife Manjit Kaur against the interest of the children is also not to be taken into account, unless a certificate is issued by a counsel representing the minors that the compromise is for the welfare of the minors. Order 32 Rule 7 of the Code of Civil Procedure provides safeguard to the future interests of the minors”.

Therefore, any argument raised by learned counsel for The petitioner that under the compromise, he is not entitled to pay the maintenance to respondent No.2-minor child is negated.

13. Now the question of quantum of maintenance payable to

respondent No.2-minor child has to be assessed, keeping in view the financial status and liabilities of the petitioner. There is no hard and fast rule or a strict mathematical calculation that can be applied in awarding maintenance. By an large, a thumb rule is applied. In a recent case reported as **Kalyan Dev Chowdhury vs. Rita Dev Chowdhury Nee Nandy, 2017 (2) RCR (Civil) 1033**, the Hon'ble Supreme Court has held that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the respondent-wife. In the said case, the High Court at Calcutta had awarded a sum of Rs.23,000/- per month as maintenance to the respondent-wife, out of the net salary of Rs.95,527/-. However, since the husband had re-married and a child from the second married, the amount of maintenance as assessed was reduced to Rs.20,000/- per month. It was held that *“Maintenance is always dependent on the factual situation of the case and the court would be justified in moulding the claim for maintenance passed on various factors”*. Undoubtedly, respondent No.2 is the minor daughter of the petitioner, born on 10.07.2003 and she is liable to be maintained by him till such time as she attains majority or gains financial independence. She was a minor, about one year old, at the time when the petition under Section 125 Cr.P.C. was filed on 09.09.2004. At the time, when the matter was decided by the CJM, Panchkula on 06.11.2012, she was about nine years old and as on date, she is about 15 years old. Her needs qua education, daily expenses are going to increase over a passage of time. However, this court also cannot loose sight of the fact that the petitioner has re-married and family of his own, comprising of aged parents, wife and two minor daughters. Even if the argument raised by counsel for respondent

No.2 is accepted that the aged parents of the petitioner are financially capable of looking after themselves, since father of the petitioner has retired from govt. service, the petitioner still has to maintain his wife and two minor daughters. Currently, the petitioner is drawing salary of Rs.53,000/- with the carry home salary of Rs.47,000/- per month as per the document annexed with the petition (CRM-M-22314-2014). However, at the time when the Additional Sessions Judge, Panchkula passed the order on 31.03.2014, the petitioner had carry home salary of Rs.35,000/- per month. The petition under Section 125 Cr.P.C. was filed in the year 2004, claiming salary of the petitioner as Rs.13,567/- per month. Under these circumstances, the order passed by Additional Sessions Judge, Panchkula dated 31.03.2014 to the extent of granting maintenance @ Rs.5000/- per month to respondent No.2-minor child from the date of filing of the petition w.e.f. 09.09.2004 is not justifiable.

14. Keeping in view the timely increase in the salary of the petitioner and his other increasing liabilities, respondent No.2-minor child is held entitled to the maintenance @ Rs.4000/- per month from the date of filling of the petition w.e.f. 09.09.2004. It is further held that respondent No.2-minor child is entitled to maintenance @ Rs.5000/- per month from the date of order passed in the revision by the Additional Sessions Judge. It is further held that respondent No.2-minor child is entitled to maintenance @ Rs.6000/- per month from the date of this order passed.

15. In view of the foregoing discussion, question No.2 is partly answered in favour of both The petitioner and respondent No.2-minor child.

16. In view of the above, all the three petition stands partly allowed

to the above extent only.

March 19, 2018
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No