

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M- 21195 of 2015 (O&M)

Date of decision : 23.7.2018

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Mrs. Ramesh Ahuja and another

.....Petitioners

vs.

Subhash Chander Ahuja

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Argued by: Mr. Ajay Jain, Advocate for the petitioners.

Mr. Pradeep Solath, Advocate for the respondent.

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H. S. Madaan, J.

Mrs. Ramesh Ahuja, aged 50 years, wife and Yogesh Pal Ahuja, aged 26 years, handicapped son, Paras Nath Ahuja, aged about 18 years, son and Gaurav, minor son of Subhash Chander Ahuja, had filed a petition under Section 125 Cr.P.C. against Subhash Chander Ahuja, seeking grant of monthly maintenance allowance.

In the petition it has been alleged that after marriage between Mrs. Ramesh Ahuja and Subhash Chander Ahuja, in January 1983 at Ambala, she gave birth to three sons i.e. Yogesh Pal Ahuja, Paras Nath Ahuja and Gaurav, all of them being co-petitioners with her. Though her parents had given sufficient dowry articles,, but

her husband – respondent and his family members were not satisfied and they started harassing, maltreating and beating her up for bringing more dowry. Petitioner No.1 did get some of the demands met, but not all, as such her maltreatment continued. According to her, respondent is a habitual drunkard and under the influence of liquor he used to beat her up on instigation of his family members. Resultantly, Yogesh Pal Ahuja was born pre-mature and handicapped by 75%. According to the petitioners, they do not have any source of income and are unable to maintain themselves. Whereas the respondent who is an officer in State Bank of India is getting about 30,000/- per month as salary besides Rs.7,000/- per month as interest on his savings. He is also getting Rs.4,000/- per month as rent from House No. 864, Sector 7, Urban Estate Ambala City. The petitioners prayed for grant of maintenance allowance @ Rs.20,000/- per month.

Upon notice, respondent put in appearance and filed written reply, challenging maintainability of the petition, though admitting the relationship between the parties, however denying the allegations of his and his family members harassing and maltreating petitioner No.1, so as to pressurise her to bring more dowry articles or even giving beatings to her. He denied that he is a habitual drunkard or accounts of beatings of petitioner No.1, petitioner No.2 was born premature and handicapped. It is denied that petitioner No.2 was brought up or maintained by parents of petitioner No.1. According to respondent, he has spent a lot of money on the treatment of petitioner No.1, who has passed 10+2 examination; that petitioners No. 2 to 4 who are college boys are majors and therefore, they could earn their

livelihood and are not entitled to any maintenance. According to the respondent, he has been maintaining the petitioners, providing them all their necessities of life including good education etc. He has got insured petitioners No. 3 and 4 for Rs.50,000/- each and has been paying installment of the premium till date. The petitioners are residing with him in House No. 1085/13, Bengali Mohalla, Ambala Cantt. According to the respondent, petitioner No.1 who is an MA in Political Science, is earning Rs,4000-5,000/- per month by taking tuition classes for the last 15 years. He is getting monthly pension of Rs.9,587/- which amount is spent on household expenses, medicines, clothing, other day to day expenses of the petitioners. The petitioners have dragged him in this uncalled for litigation with a view to grab his pension and thereafter to oust him from the aforesaid house. They are not entitled to any maintenance. Therefore, the petition be dismissed.

Parties were afforded opportunities to lead evidence, during the course of which petitioner No.1 Mrs. Ramesh Ahuja, examined herself as PW-1, Suraj Parkash Manocha as PW2 and PWS-3 and Amarjit Singh, Assistant Manager as PW-4.

In rebuttal, respondent has appeared himself as RW-1 and Dr. K.G. Gupta, as RW-2.

After hearing the arguments, the Magistrate awarded a sum of Rs.5,000/- per month to petitioner No.1 Smt. Ramesh Ahuja, payable by respondent, whereas claim of other petitioners was not accepted. They had filed a revision petition before the Court of Sessions, which was accepted by Additional Sessions Judge, Ambala,

who vide judgment dated 21.11.2013, modified the judgment passed by the trial Court by awarding Rs.,1,000/- per month as maintenance to petitioner No.2 Yogesh Pal Ahuja. In that way, the revision petition was partly allowed. Regarding all other aspects, grounds taken in the petition, those were dismissed.

Now, the judgments passed by the Courts below are being challenged, by way of filing the present petition under Section 482 Cr.P.C. for modification of the judgment dated 21.11.2013 granting maintenance to petitioner No.1 @ Rs.5,000/- per month and Rs,1,000/- per month to petitioner No.2, with a prayer to enhance the maintenance granted to the petitioners to the tune of Rs.,20,000/- and Rs.10,000/- respectively to petitioners No.1 and 2.

Notice of the petition was given to the respondent, who has put in appearance.

I have heard learned counsel for the petitioners, learned counsel for the respondent, besides going through the record.

I do not find any merit in the petition. The Judicial Magistrate who had disposed of the application under Section 125 Cr.P.C. had considered all the facts i.e. the financial resources of the respondent, requirement of the petitioners, their social status etc. while granting maintenance @ Rs.5,000/- per month to petitioner No.1. However, declining it to the other petitioners.

Learned Additional Sessions Judge, Ambala, in the revision petition preferred by petitioners affirmed the order/judgment passed by the learned Judicial Magistrate Ist Class, Ambala, granting monthly maintenance allowance @ Rs.5,000/- per month, though

modified the order/judgment passed by the Judicial Magistrate Ist Class, Ambala and granted Rs.1,000/- per month as maintenance to Yogesh Pal Ahuja – petitioner No.2, considering his physical disability.

I do not find the judgment passed by the learned Additional Sessions Judge, suffers from any infirmity or illegality, which might have called for interference by this Court, while exercising inherent powers under section 482 Cr.P.C.

Learned counsel for the respondent has referred to citation **Kola Keshava Reddy vs. Kola Anantha Lakshmi 1997 (2) RCR (Criminal) 533**, by Andhra Pradesh High Court, wherein it was observed that when an order granting maintenance awarded by Magistrate, had been challenged by way of filing revision petition on the point of quantum of maintenance, which was dismissed by the Court of Sessions, then second petition under Section 482 Cr.P.C. before High Court is not maintainable.

He has further referred to authority **Mast Ram vs. Smt. Shanti Devi 2002 CriLJ 1616**, by Himachal Pradesh High Court, wherein it was observed that when there are concurrent findings of trial Court and revisional Court that petitioner husband is not maintaining wife and that wife does not possess any means to maintain herself, then merits of such findings arrived at by both the Courts below cannot be gone into under Section 482 Cr.P.C. or under Article 227 of the Constitution of India, which has very narrow scope. He has further referred to authorities **Laxminarayan Patnaik vs. Saudamini Patnaik and another 1993 CriLJ 227** and **Ashim**

Kumar Chatterjee vs. Smt. Moushumi Chatterjee Nee Bhattarcharjee 2010 (22) RCR (Criminal) 893, in support of those contentions.

On the other hand, learned counsel for the petitioners has referred to copy of judgment passed by Hon'ble Supreme Court in **Criminal Appeal No. 2435 of 2014**, titled as '**Jaiminiben Hirenghai Vyas and another vs. Hirenghai Rameshchandra Vyas and another**' decided on 19.11.2014, in support of his contention that the maintenance should have been granted from the date of application and not from the date of order. A perusal of this authority goes to show that the Apex Court had observed that High Court had not given any reason for not granting maintenance from the date of application and facts and circumstances of the case justified grant of maintenance with effect from the date of application, in view of the finding that appellant had worked before marriage and had not done so during her marriage.

In the instant case, learned Additional Sessions Judge, in para No. 9 of the judgment has observed that considering amount of maintenance awarded to petitioners No.1 and 2 to the effect that they have been granted interim maintenance @ Rs.2,000/- per month and Rs.1,000/- per month, the direction given by learned Magistrate that it should be paid from the date of impugned judgment, appears to be justified in the facts and circumstances of the present case. Thus proper reasoning is there. I do not find myself disagreeing with learned Additional Sessions Judge on that point, so as to modify the judgments passed by the Courts below and granting maintenance to

the petitioners from the date of petition.

The petition being without any merit stands dismissed.

23.7.2018
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(H.S. Madaan)
Judge

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