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

Crl. Misc. No. M-26990 of 2016 (O&M)
Date of decision : 26.10.2018

Amit Aggarwal

......Petitioner(s)

Versus

Ritu Aggarwal and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Argued by: Mr. Sukhbir Singh, Advocate
for the petitioner.

Mr. Sourabh Goel, Advocate
for the respondents.

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ANITA CHAUDHRY, J.

The petitioner assailed the order dated 12.04.2016, passed by the Addl. Sessions Judge and order passed by the Magistrate on the application filed under Section 125 Cr.P.C.

The essential facts need a narration. Ritu was married to Amit on 21.10.2003. A daughter was born to them in 2004. The petition seeking maintenance was filed in 2006. The wife pleaded that she had been thrown out of the matrimonial home in June 2006 and had no independent source of income. The husband was a Chartered Accountant and was earning more than Rs.1 lac per month. Besides he owned moveable and immovable property.

The husband took an objection that the petition was not maintainable at Batala as the marriage took place in Delhi and before marriage the wife was living in Amritsar. It was pleaded that Ritu was a divorcee and as per his information she had received some amount on settlement with the earlier husband. It was denied that their marriage was solemnized with lot of pomp & show. It was pleaded that since both the parties were divorcees, therefore, their marriage was simple.

It was pleaded that petitioner no.1 had beaten his mother and she had taken all the Istridhan with her when she went to attend a wedding in her family. It was pleaded that she had come along with hardcore criminals and had taken the jewellery of his mother after beating her and the police was called and he filed a complaint with the Magistrate in Delhi who directed the police to lodge an FIR. It was pleaded that petitioner no.1 was highly qualified and was carrying on food business from home and she was doing the same business at Batala. It was denied that he was earning Rs. 1 lac per month. It was pleaded that he had not got any clients yet and had no rental income and his income was Rs.7,000/- per month.

Both the sides led evidence. The wife examined herself and her brother while the husband examined the Manager from Union Bank who brought the account statement of Vanshika, their daughter. The bank official from Canara Bank brought Ritu's account. The Senior Tax Assistant from the Income Tax Office brought the income tax returns of Ritu from 2007 onwards. Besides this the respondent examined himself. It was stated that an *ex parte* decree for divorce was granted to the respondent on the grounds of cruelty and petitioner no.1 had filed an application for setting aside the *ex* *parte* decree after 14 months. It was pleaded that petitioner no.1 was investing in stock market and had a demat account and during the course of this petition, she deliberately and intentionally transferred holding shares to other accounts. It was pleaded that in the last five years huge amounts have been transacted in her account to the tune of Rs.30 lacs and she had independent source of income. It was pleaded that she was paying an annual premium of Rs. 35,000/- on the insurance policy taken from Birla Sun Life and she had three other insurance policies with Bajaj Allianz and the petitioner had concealed facts that she was having income from dividends.

The trial Magistrate held that the husband was concealing his income and he had taken his office on rent @ Rs.7,500/- per month and he had suppressed his income and therefore, Rs.10,000/- each was allowed to both the wife and the child from the date of application.

Aggrieved by the judgment, a revision was preferred by the husband and it was dismissed.

The amount allowed to the wife was stayed by the co-ordinate Bench on 09.11.2017. The petitioner was directed to clear all the amount that was payable to the child.

I have heard counsel of both the sides.

The submission on behalf of the petitioner is that the couple was married in October 2003 and the wife left the matrimonial home in January 2006 and six months later a petition under Section 125 Cr.P.C. had been filed. It was urged that the wife had concealed her income and she was working from the very beginning and they had produced ample material before the Court which was ignored. It was urged that when the wife conceals her income then she was not entitled to any amount. It was contended that the account statement of Canara Bank is available on record which was exhibited which shows that huge amounts deposited in her bank account even in February 2006. The counsel further submitted that the respondent feigned ignorance about the ITRs and stated that she did not know that the ITRs were being filed. The counsel further submitted that the income tax returns are signed and the Senior Tax Assistant had brought the income tax returns from 2007 till 2012 which have been ignored by the Court below. The counsel further submitted that the wife was investing in the stock market and had a demat account with National Securities Depository and she had deliberately transferred the holding shares. It was urged that the respondent had transacted in the bank accounts standing at Canra Bank and during the last five years, approximately 30.00 lacs had bene received in her account. It was urged that she was already having insurance policy of which annual premium of Rs. 25,000/- was being paid. The counsel further submitted that when both the parents are working then they have to bear the burden of the child equally. The counsel further submitted that the petitioner had deposited amount in the name of the child as maintenance and that amount was withdrawn after 1½ year and that goes to show that the respondent did not need any amount. The counsel also submitted that the petitioner had filed a petition for divorce and the wife failed to appear and an *ex parte* decree of divorce was passed in May 2008 and the wife had filed an application for setting aside the ex parte decree years later which was dismissed in default in July 2011 and an application seeking restoration was filed and her evidence had been closed but the application was still pending. The counsel further submitted that the wife had filed a criminal complaint against the relatives. The counsel also submitted that the petitioner had already deposited Rs. 14.00 lacs. The counsel also submitted that the child was only 2½ years old to whom Rs. 10,000/- per month has been allowed payable from the date of institution and the petition was filed in 2006.

On the other hand the submission of the respondent was that the wife was unskilled and unemployed and had no technical or professional knowledge and had no independent source of income and was unable to maintain herself whereas the husband was a Chartered Accountant who was earning more than Rs. One lac per month and had huge moveable and immovable property and was getting rental income of Rs. 20,000/- per month and a wrong plea had been taken that he was earning only Rs. 10,000/- per month and those submissions were rejected by the Court below as it was found that he was paying rent of Rs. 7500/-.

It would be necessary to reproduce the reasoning given by the trial Court while allowing maintenance to the wife and child.

> *"12. The claim of the respondent is that petitioner has sufficient source of income, therefore, she is not liable for any maintenance. But this argument of learned counsel for the respondent is not tenable because through the evidence of RW-1, RW-2 and RW-3 respondent tried to prove that the petitioner No. 1 is income tax payee and she is having sufficient cash in her different accounts to meet out the daily needs of life. But careful perusal of entire evidence goes on to show that the respondent has failed to prove on record that petitioner No. 1 is running any business. Even the perusal of copy of account opening form in Canara bank reveals that it*

was opened on 3.12.1997 i.e. much prior to marriage of petitioner, therefore, respondent cannot derive any benefit from that and cannot escape from his legal liability. Even if the respondent is succeeded in proving that the petitioner has sufficient means, even then he cannot escape from his legal liability to maintain his wife and children. Moreover, it has been held by Hon'ble Supreme Court of India in Chaturbhuj vs. Sita Bai 2008(1) R.C.R. (Criminal) page 163 that, " wife having personal income, but not sufficient-Wife can claim maintenance- The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. It has further been held that wife should be in a position to maintain standard of living which is neither luxurious nor penurious but what is consistent with status of a family". In the case in hand although there had been bank balance in account of petitioner No. 1, but that amount is not sufficient for further life as she use to with her husband. Further burden of petitioner No. 2 is also upon the shoulder of petitioner No. 1. Therefore, the argument of learned counsel for the respondent that petitioner No. 1 is able to maintain herself with the cash available with her is not sustainable.

13. The applicant averred that the respondent is Chartered Accountant by profession and earning more than one lac per month and also having rental income of Rs. 20,000/- per month. Whereas the respondent denied that he is having income of one lac per month and alleged that he is earning only Rs. 10,000/- per month. But this assertion of the respondent is not believable as he admittedly working as Chartered Accountant in Delhi. He also admitted that he is having his own house in Delhi. He also admitted in his cross-examination that he is paying the rent to the tune of Rs. 7500/- as rent of his office. It all goes on to show that respondent just sought to suppress his income to defeat the claim of the

> *maintenance. For my this view I am fortified with pronouncement of Hon'ble Calcutta High Court in case* ***Vinod Kumar Lodha vs. Reena Lodda (nee Jain), 2010 (6) RCR (Criminal) page 1887.***

The parties were married in October 2003. It was the second marriage for both of them. The child was born in 2004. Differences cropped up early and the petition seeking maintenance was filed in June 2006. The husband is a resident of Delhi. The wife returned to the parent's house. The petition was filed at Batala in Punjab.

Ritu Aggarwal in her affidavit took the same stand as taken by her in her petition. It was specifically said that she was unskilled, unemployed, had no technical or professional knowledge and had no independent source of income and did not possess any movable or immovable property.

Amit Aggarwal in his affidavit mentioned that Ritu was a income tax payee. He gave her PAN number and filed some of the income tax returns Ex.RW4/11 & Ex. RW4/12. He specifically stated in his affidavit that she was investing amounts in the stock market and there were sufficient funds in her account and she was engaged in business and the transactions were regularly made in her bank account standing with Canara Bank. He also spoke about the polices taken by her and the premium she was paying for the policies every year. He also mentioned about the two PPF accounts with State Bank of India and that she was earning Rs.50,000/- per annum as interest. He also spoke about the amount invested by her in Kisan Vikas Patra. He also referred to her share in her father's HUF which had a bank account which was operational and huge amounts were being transacted. He had stated that Anju and her brother had made a number of complaints against him and were seeking cancellation of license and they also made complaints to Service Tax Department & Income Tax Department and filed copies of the same. He stated that all the complaints were found to be bogus and were closed. He had stated that his wife had filed a complaint against father's brother which was investigated by Delhi Police and the complaint was closed. He had also pleaded that all his time and meagre earnings were spent on the legal expenses and attending Court proceedings and departmental inquiries and he was unable to devote time and needed to concentrate on his practice.

Besides that the respondent-husband had examined the Clerk from State Bank of India, official from Bajaj Allianz Insurance Company, the Senior Tax Assistant from the Income Tax Department to prove the bank accounts, bank statements and the income tax returns.

On perusal of the voluminous record produced by Amit Aggarwal, it is clear that Ritu Aggarwal was engaged in some business from 2006 and she had a PAN card and she had been filing her tax returns and there is income which is coming to her which she had concealed. The wife was getting income from dividend, interest from the amounts deposited in the bank. It had also come in evidence that her father who was the Karta of the HUF had died. The wife failed to give any explanation in the affidavit filed by her though the husband had given the details in his reply. She feigned ignorance when confronted with her income-tax returns. She merely stated that her brother would know of it.

When the brother stepped into the witness box, he stated that he had no information/knowledge that his sister was paying any income tax or was filing returns. He stated that the advisor would know. He also stated that his sister would know. So, both the brother and sister were concealing and suppressing the income. When the facts are concealed and it is found that the wife had income, she was not entitled to any maintenance. The wife had made false statement that she had no source of income. It is settled that a litigant who approaches the Court of law seeking redressal of any grievance and claims relief, is obliged to disclose complete and true facts. The obligation to approach the Court with clean hands is absolute. A litigant who attempts to mislead the Court by furnishing false facts or by concealing material facts, is not entitled to any relief by it, interim or final. In ***K.D. Sharma Vs. Steel Authority of India Ltd. 2008(12) SCC 481***, it was held that *no litigant can play hide & seek with the Court*. It was further observed that suppression or concealment is impermissible to a litigant or even as a technique of advocacy.

In the light of this, the order granting maintenance to the wife by the Courts below has to be set aside. The wife had income, she deliberately concealed the income. The Courts below completely ignored the evidence.

This Court, however, is of the view that the interest of the child cannot be jeopardized on account of the conduct of the mother and where both the parents have income, then both the parents have to contribute.

As regards the income of the husband. He is a Chartered Accountant. No doubt he has been running from one office to the other responding to the complaints filed by the wife and her brother, he had been spending part of the income on litigation. But at the same time, considering that he is a licensed Chartered Accountant, his income was definitely more than what was pleaded by him. Considering all the facts and that the child of this family would be going to a good school and there would be expenses not only on her food, school fees, tuitions, uniforms, transportation etc., therefore, the amount allowed to the minor daughter cannot be said to be on the higher side.

As a consequence of above, the petition is partly allowed. The order allowing maintenance to the wife is set aside. The order allowing maintenance to the child is upheld.

26.10.2018 **(ANITA CHAUDHRY)**
Sunil **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No