

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

(1)

CRM-M-30561 of 2015 (O&M)
Date of Decision: October 17, 2018

Bhupinder Singh

...Petitioner

Versus

Inderjit Kaur

...Respondent

(2)

CRM-M-33586 of 2015 (O&M)

Inderjit Kaur

...Petitioner

Versus

Bhupinder Singh

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Ishwar Lal, Advocate for
Mr. G.K. Saini, Advocate
for the petitioner in CRM-M-30561 of 2015 and
for the respondent in CRM-M-33586 of 2015.

Mr. Anurag Arora, Advocate
for the respondent in CRM-M-30561 of 2015 and
for the petitioner in CRM-M-33586 of 2015.

JAISHREE THAKUR, J.

1. By this common order, this court shall decide above captioned two criminal miscellaneous petitions. In CRM-M-30561 of 2015, petitioner-Bhupinder Singh is challenging the order dated 13.07.2015 passed by the learned Additional Sessions Judge, Patiala whereby his revision petition for

setting aside the order dated 14.11.2014 passed by the learned Sub Divisional Judicial Magistrate, Samana, granting maintenance to respondent-Inderjit Kaur was dismissed as well as the said order dated 14.11.2014. In CRM-M-33586 of 2015, petitioner-Inderjit Kaur is also challenging the order dated 13.07.2015 passed by the learned Additional Sessions Judge, Patiala whereby her revision petition for enhancing the maintenance amount as well as for modifying the order dated 14.11.2014 was dismissed.

2. In brief, the facts of the case (*as taken from CRM-M-30561-2015*) are that respondent-applicant Inderjit Kaur filed a petition under Section 125 of Code of Criminal Procedure (for short 'Cr.P.C.') alleging therein that she is legally wedded wife of petitioner-respondent Bhupinder Singh and their marriage was solemnized about 15 years back at Chandigarh, as per Hindu rites and ceremonies, but no child was born out of this wedlock. After marriage, the petitioner used to treat her with cruelty and used to demand more and more dowry and on her failure to do so, she was given beatings and ultimately turned out of her matrimonial home. Thereafter, she came to know that her husband had arranged a second marriage with a girl namely Neetu without getting divorce from her. The respondent claimed maintenance alleging therein that the petitioner is earning ₹ 50,000/- per month by practicing in the High Court, Chandigarh, besides earning ₹ Rs.25,000/- per month from the agricultural land situated at Village Marru.

3. The said petition was duly contested by the petitioner herein denying the allegations levelled by the respondent. It was alleged that

during her stay with the petitioner, she never made any complaint regarding his behaviour for demand of dowry. It was admitted that no child was born to the respondent and he suggested her to adopt a child, but she did not agree. It was further alleged that the petitioner never misbehaved with the respondent and in fact, it is the respondent who had deserted the petitioner and left for her parental home. The marriage of the petitioner with alleged Neetu was also denied. It was claimed that the petitioner is an assisting Advocate with Sh. N.S. Bawa, Advocate, who used to pay him a sum of ₹ 5000/- per month, but denied having any land at Village Marru or Chandigarh.

4. The learned Sub Divisional Judicial Magistrate, Samana by the impugned order dated 14.11.2014, allowed maintenance @ ₹ 5000/- per month to the respondent-wife from the date of the application, apart from granting ₹ 500/- towards litigation expenses. Being not satisfied, both the parties challenged the said order in revision, whereby petitioner-Bhupinder Singh requested for setting aside the said order whereas, respondent-Inderjit Kaur sought modification, with a request to enhance the maintenance amount. However, both the criminal revisions came to be dismissed by the learned Additional Sessions Judge, Patiala by a common order dated 13.07.2015, which order is under challenge before this court in both the aforesaid criminal miscellaneous petitions.

5. Learned counsel appearing on behalf of petitioner-Bhupinder argues that respondent-Inderjit Kaur failed to give specific date, month and year of her marriage with the petitioner, apart from giving details of the marriage ceremony in her petition, which were mandatory to prove her

marriage with the petitioner. It is submitted that the respondent also failed to adduce evidence to support her plea of marriage with the petitioner, when the factum of marriage was denied by the petitioner. It is contended that the respondent was earlier married to one Hardev Singh son of Anoop Singh and there was no divorce between them, as such, she cannot claim maintenance from the petitioner to be legally wedded wife. In support of his arguments, learned counsel relied upon judgments rendered in **Samir Mandal vs.State of Bihar and another, 2001(10) SCC 50, Yamunabai Anantrao Adhav vs. Anantrao Shivramm Adhav, 1988(1) RCR (Criminal) 322.**

6. Per contra, learned counsel appearing on behalf of respondent-Inderjit Kaur argues that the revisional court has failed to appreciate the fact that the petitioner is practicing in the Punjab and Haryana High Court at Chandigarh and from the record, it is revealed that the petitioner-husband has sufficient filing during a month, which would show that his minimum income has to be more than ₹ 1 lac. It is argued that the petitioner has concealed his actual income from both the trial court as well as revisional court. It is submitted that the respondent is legally wedded wife of the petitioner, as at the time of their marriage, first husband of the respondent was not alive. It is argued that in the given facts of the case, the amount of maintenance needs to be enhanced to ₹ 10,000/- per month. In support of his arguments, learned counsel relied upon judgments rendered in **Badshah vs. Sou. Urmila Badshah Godse and another, 2013(4) RCR (Criminal) 764, Chanmuniya vs. Virendra Kumar Singh Kushwaha and another, 2010(4) RCR (Criminal) 704.** Learned counsel for the respondent-wife

has also placed on record photocopy of Directory of Punjab and High Court Bar Association, showing the enrollment number of petitioner-Bhupinder Singh Hanjra as P/2147/2006 and that he is residing at 747, Dashmesh Nagarm, Nayagaon, District Mohali, besides the office address as 2967, Sector 42-C, Chandigarh. Learned counsel for the respondent has also placed on record detail of the cases, which have been filed by the petitioner as an Advocate. Learned counsel has also placed on record a photocopy of the sale deed showing that the petitioner has purchased land at Village Maroo, Police Station Jhulka, District Patiala in the year 2010, to argue that the petitioner is earning handsomely, while practicing as an Advocate. Regarding the factum of alleged second marriage of the petitioner, learned counsel for the respondent also placed on record a photocopy of the Birth Certificate issued by Chandigarh Administration showing the petitioner Bhupinder Singh and one Ravneet Kaur as father and mother of child Manvir Singh, born on 10th August, 2011 wherein address of the parents has been mentioned as # 747, Dashmesh Nagar, Nayagaon, Mohali.

7. I have heard learned counsel for the parties, apart from perusing the record with their assistance.

8. An argument has been raised by learned counsel for the petitioner that the respondent is not legally wedded wife of the petitioner, as such, she is not entitled to claim maintenance. This argument was also raised by the petitioner before the courts below. The trial court, in its order dated 14.11.2014, has observed as under:-

“7. Thus, a cumulative and conjoint reading of the reply to the petition (sic.) clearly shows that there was relationship of the petitioner and the respondent as

husband and wife otherwise, there was no reason for the respondent to term the earlier marriage of the petitioner as first marriage; then to plead that while petitioner remained resided with him, she never made any complaint regarding behaviour of respondent and the material pleadings regarding the respondent having got the petitioner medically treated for her incapacity to bear a child. The respondent has even gone to the extent of suggesting the petitioner to adopt a child. Moreover, in case there was no such relationship then how the question of petitioner deserting the respondent and leaving for her parental house arises.

8. *Even the stand of the respondent at the stage of his evidence makes this fact very clear. While appearing as RW-2, in his cross-examination the respondent has taken a new stand in the initial portion of cross-examination that he does not know Inderjit Kaur. When confronted with the pleadings made in his reply to the petition, he has taken an interesting stand that his counsel has not read over the pleadings of the reply to him. It is pertinent to note that, although the petitioner pleads the respondent to be an Advocate, however, even as per the stand taken by the respondent he is assisting an Advocate in Hon'ble Punjab and Haryana High Court. Thus, it is not a position that the respondent is an illiterate layman who has signed the reply to the petitioner blindly. Therefore, such stand taken by him in his cross-examination clearly appears to be an effort to deny his relationship with the petitioner at any cost.”*

9. Further, the Revision Court, by the impugned judgment dated 13.07.2015 has observed as under:-

“12. *It is settled law that the standard of proof of*

marriage in proceedings under Section 125 Cr.P.C. is not as strict as is required in the trial under Section 494 IPC and the facts and circumstances of each case are to be looked into in the light of the parameters that it falls into. In the instant case, the respondent in clear explicit terms in his reply admitted his marriage with the petitioner but failed to prove that it was a second marriage as it is not proved that Hardev Singgh was alive when the petitioner married the respondent. Hence, the learned trial court has rightly held that the petitioner is the legally wedded wife of the respondent and that the factum of the marriage being void on account of earlier marriage of the petitioner with Hardev Singh, has not been proved at all.”

10. This court has thoroughly gone through the reply filed by the petitioner to the petition filed by the respondent, produced on record as Annexure P2 (in CRM-M-30561-2015). In the said reply, the petitioner herein has claimed that the respondent is not his legally wedded wife, however, stated that she while residing with him, never made any complaint regarding the demand of dowry; he got her medically treated and even suggested to adopt a child; he never misbehaved with the respondent and kept and treated her nicely throughout; she deserted the petitioner and left for the parental house; he was not legally bound for payment of maintenance, but he is ready if the respondent join with him for living her life. After going through the said reply, this court does not find any force behind the argument, so raised by learned counsel for the petitioner, denying the factum of marriage of the petitioner with the respondent. Under the facts and circumstances of the present case, this courts finds no illegality

or infirmity in the findings so recorded by the courts below that the respondent is legally wedded wife of the petitioner. In this regard, the case law relied upon by learned counsel for the petitioner is not applicable to the facts and circumstances of the present case.

11. Now, the next question, which arises for adjudication of this court is whether the amount of maintenance @ ₹ 5000/- per month, so awarded in favour of the respondent-wife is sufficient or the same is liable to be enhanced. The trial court, in its order dated 14.11.2014, has observed that the petitioner herein had admitted his income to the extent of ₹ 5000/- per month. However, considering the income of the daily wager to be between ₹ 9000-10,000/-, the trial court observed that the monthly income of the petitioner cannot be assessed less than that of a daily wager and it was under these circumstances, taking the monthly income of the petitioner as ₹ 10,000/- per month, the court granted maintenance @ ₹ 5000/- per month to the respondent-wife. Even the revisional court has taken the similar view and dismissed the revision filed by the respondent-wife claiming enhancement.

12. The respondent-wife is claiming enhancement in the said maintenance amount from ₹ 5000/- to ₹ 10,000/- per month, on the ground that the petitioner has concealed the material facts from the court. It is claimed that the petitioner-husband is practicing in the Punjab and Haryana High Court at Chandigarh and from the records of this Court, it has revealed that he has sufficient filing during a month, which would show that his minimum income has to be more than ₹ 1 lac. From the documents produced on record, it is borne out that the petitioner is working as an

Advocate in the Punjab and Haryana High Court at Chandigarh, having enrollment number P/2147/2006. The detail of the cases, which are filed by the petitioner in the High Court has been produced on record before this court, which goes on to show that he has independently filed a few cases and thus, it cannot be said that he is only assisting an Advocate. The photocopy of the sale deed, which is duly registered with the Sub Registrar Sahib Majri and has been produced on record during the course of arguments, shows that the petitioner herein has purchased a land in the year 2010 for a sum of ₹ 3,00,000/- at Village Karoran, Tehsil Kharar, District SAS Nagar. Under these peculiar facts and circumstances of the present case, the petitioner who is practicing as an Advocate at Punjab and Haryana High Court at Chandigarh since the 2006; purchased a land in the year 2010 for a sum of ₹ 3,00,000/-; residing at House No.747, Dashmesh Nagar, Nayagaon, District Mohali (either owned or rented); maintaining his office at House No.2967, Sector 42-C, Chandigarh cannot be said to be earning less than ₹ 30,000-35,000/- per month. So, by taking the monthly income of ₹ 30,000/- per month, the amount of maintenance so awarded is inadequate, keeping in view the rising cost of living, especially when the respondent-wife has no source of income.

13. Section 125 Cr.P.C. stipulates that if any person having sufficient means neglects or refuses to maintain his wife, his legitimate or illegitimate minor child, who are otherwise unable to maintain themselves, shall be obligated to do so. A moral duty and a statutory obligation is cast upon the husband to maintain his wife, minor children, parents who otherwise are not capable of maintaining themselves. The question of

quantum had been decided by the Hon'ble Supreme Court in ***Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy, (2017) 14 Supreme Court Cases 200***, wherein it has been held that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the wife. The instant case, the respondent-wife has no independent source of income to maintain herself. The respondent herein has a responsibility towards his wife and, therefore, keeping in view the earning of the petitioner to be ₹ 30,000/- per month, the maintenance amount payable to the respondent-wife is enhanced to ₹ 8,000/-. The enhanced payment of maintenance would be payable from the date of passing of this order.

14. Learned counsel for the respondent-wife also agitated the issue that the petitioner has re-married during the existence of his first marriage and in support of his arguments, he relied upon Birth Certificate issued by the Chandigarh Administration, which clearly reflects that a son namely Manvir Singh was born to the petitioner herein and his second wife namely Ravneet Kaur on 10.08.2011 having residential address of House No.747, Dashmesh Nagar, Nayagaon, Mohali, however, this court is not inclined to go into this issue because the proceedings in hand related to maintenance under Section 125 Cr.P.C.

15. In view of the above, CRM-M-33586 of 2015 is allowed and CRM-M-30561-2015 is dismissed.

October 17, 2018
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No