

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

CRM-M No. 34521 of 2016
DATE OF DECISION :- September 04, 2018

Harish Kanda

...Petitioner

Versus

Pooja Kanda and another

...Respondents

CRM-M No. 9651 of 2016

Pooja Kanda and another

...Petitioners

Versus

Harish Kanda

...Respondent

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

Present:- Mr. Munish Gupta, Advocate for the petitioner
in CRM-M No. 34521 of 2016 and for the respondent
in CRM-M No. 9651 of 2016.

Dr. Anand Bishnoi, Advocate
with Ms. Shweta Nahata, Advocate for the petitioners
in CRM-M No. 9651 of 2016 and for the respondents
in CRM-M No. 34521 of 2016.

My this order shall dispose off two petitions bearing CRM-M
No. 34521 of 2016 filed by Harish Kanda and CRM-M No. 9651 of 2016
filed by Pooja Kanda and another since they arise out of the same order
dated 5.8.2015 passed by Additional Sessions Judge, Jalandhar and order
dated 9.3.2015 passed by Judicial Magistrate, Ist Class, Jalandhar.

Briefly stated that facts of the case are that Pooja Kanda estranged wife, Lovish Kanda minor son of Harish Kanda had filed an application under Section 125 Cr.P.C. against the latter for grant of monthly maintenance allowance. In the said application the applicants had contended that marriage between applicant Pooja Kanda and respondent Harish Kanda was solemnized on 29.8.2006 at Jalandhar according to Hindu religious rites. After the marriage the spouses started residing together. Their marriage was consummated and they were blessed with a male child named Lovish Kumar on 26.6.2011, who is presently living with applicant no. 1; though at the time of marriage between applicant no. 1 and respondent, parents of applicant no. 1 had spent a huge amount giving considerable dowry articles to respondent and his family members as per their demand, but that failed to satisfy them. After about one month of the marriage respondent and his family members started treating applicant no. 1 with cruelty raising demand of a Car and an amount of Rs.3 lacs; applicant no. 1 expressed her inability to get those demands met, as such she was turned out of the matrimonial home but with intervention of respectables she was rehabilitated in the matrimonial home; that on 26.6.2011 she gave birth to petitioner no. 2 and the whole expenditure of delivery was borne by parents of applicant no.1; valuable gifts, cash and gold ornaments were given to the respondent and his family members but on that occasion they never bothered to see petitioner no. 1 and newly born baby. As a matter of fact applicant no.1 was harassed and maltreated by respondent and his family members on account of demand of dowry which applicant no. 1

could not get conceded. She was given merciless beatings and she along with minor son of the parties that is applicant no. 2 was turned out of the matrimonial home on 13.8.2011. Various Panchayats were convened for rehabilitation for applicants but respondent and his family members refused to allow return of applicant no. 1 and the minor child to the matrimonial home unless their demand of Car and Rs.3 lacs was fulfilled. They misbehaved with members of Panchayat also. According to the applicants, respondent is a wholesale dealer of mobile phones, besides doing business of Western Union and is earning Rs.90,000/- per month whereas applicant no. 1 does not have any source of income and she is on mercy of her parents since 2011. Applicants prayed that a sum of Rs.20,000/- each per month as maintenance amount and Rs.20,000/- as litigation expenses be awarded to them.

On notice, the respondent appeared and filed written reply taking various legal pleas coming with an offer that he is ready and willing to keep and maintain applicants and that applicant no. 1 is doing work of tailoring and is earning sufficient amount. On merits, he admitted the factum of marriage between him and applicant no. 1 and they being blessed with applicant no. 2 a son. According to him the parents of applicant no. 1 used to make phone calls and they never gave good advise to her. Applicant no. 1 did not give due respect to parents of the respondent. She was not doing routine work rather she taunted and insulted the parents of respondent. Applicant no. 1 acted to create a gap in relations of respondents with his parents resultantly parents of respondent shifted with applicant

no.1 to the Ist floor of the house; that applicant no.1 always tried to find ways to let down the respondent; applicant no. 1 used to lock herself in a room and threatened that she would commit suicide and would implicate the entire family of the respondent. The behaviour of applicant no.1 towards parents of respondent was insulting and non cooperative; on 22.10.2007 parents of respondent disinherited the respondent and applicant no.1 and on coming to know about the disinheritance, they apologized in writing however there was no change in the behaviour of applicant no.1; that in the year 2009 applicant no. 1 went to her parental house but refused to return. It was only with the intervention of respectable persons that applicant no. 1 came back to the matrimonial home. The respondent no. 1 on his part has cited various instances to show that behaviour of applicant no. 1 with respondent and his family was not proper. Brother and mother of applicant no.1 have also insulted the respondent and his brothers grappling with respondent; According to respondent, applicant no.1 is earning Rs.4500/- per month by doing work of tailoring whereas respondent and his brother Munish Kanda are doing the work of mobile repair under their grand father on monthly salary of Rs.4500/- per month. Refuting the remaining allegations respondent prayed for dismissal of the petition. The parties led evidence.

After hearing the counsel for the parties the trial Court granted monthly maintenance allowing at the rate of Rs.4500/- per month to applicant no.1 and Rs.3,000/- per month for applicant no. 2, in total Rs.7500/- per month. Both the parties felt aggrieved by the said order and

they have filed the revision petitions, which were disposed off vide a single judgment dated 5.8.2015 inasmuch as the impugned order was not interfered with as such both the parties have now knocked the doors of this Court by way of filing separate petitions under section 482 Cr.P.C.

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

In the instant case the trial Magistrate has referred to the Income Tax returns of respondent submitted by the petitioners showing his monthly income to be 58,000/- but learned Magistrate hurried to add that income tax alone is no scale of measuring the income of the respondent since many a times assessee's do not reflect their real Income Tax Returns filed by them and that considering the fact that respondent is doing business of mobile phones and he claims himself to be nominee to a Alto Car, it would be just including that Income Tax Return is filed by him does not reflect his true income. The Courts below have not accepted contention of Harish Kanda that he is doing job at the rate of Rs.5200/- per month referring to the documents his ITR 2014-15 Ex.RW1/A, appointment letter as Ex.RW1/C, another appointment letter Ex.RW2/2, slip in which salary of respondent have been shown as Rs.50,000/-Rs.51,000/-. He has further relied upon the account ledgers and all these documents reflect monthly salary of Harish Kanda as Rs.5200/- per month. Learned Additional Sessions Judge has referred to testimony of PW6 Pankaj Kumar who has brought the ITR of Harish Kanda in which income of respondent is shown as Rs.1,09,980/- whereas in the another return income has been shown as

Rs.1,11,000/-. Respondent no. 1 had examined PW9 Ashwani Kumar who had brought the record related to Alto Car stands in the name of father Chaman Lal Kanda. Thus in light of the Income Tax Returns and other documents available on record learned Additional Sessions Judge observed that respondent was not bringing the truth before the Court and he had prepared salary certificate after filing of the present petition. The contention put forward by applicant no. 1 that respondent has been earning Rs.90,000/- per month has not been found to be established on record by the Additional Sessions Judge, Kapurthala rather referring to Income Tax Returns Ex.PW6/A to PW6/F it has been held that actual income of Harish Kanda is below Rs.2 lacs. Under the circumstances, the revision petition was dismissed upholding the order passed by the Court below.

In view of the concurrent findings recorded by the two Courts below, no interference therewith while exercising powers under Section 482 Cr.P.C. is called for. Since inherent powers of the High Court which have been saved by Section 482 Cr.P.C. can be exercised to make such order as may be necessary to give effect to any order under Cr.P.C. or to prevent abuse of process of Court or to secure the ends of justice. The orders passed by the Courts below are well reasoned based on proper appraisal and correct interpretation of law. There is no illegality or infirmity there with. It may be said that both the parties have got the remedy to approach the trial Court and move application under Section 127 Cr.P.C. seeking alteration in allowance mentioning change in circumstances, if any, with regard to increase/decrease in the allowance of maintenance or interim

maintenance.

Therefore, I conclude that there is no ground to enhance the monthly maintenance allowance granted to Pooja Kanda and Lovish Kanda-minor son of the parties. Therefore, petition filed by them stands dismissed. Similarly petition filed by Harish Kanda for setting aside the maintenance to petitioners is also doomed for failure. Therefore, the same stands dismissed.

(H.S. MADAAN)
JUDGE

September 24, 2018
p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No