

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

Crl. Misc. M 4009 of 2018 (O&M)
Date of decision: 11.7.2018

Jyoti Chauhan

...Petitioner

Versus

Vivek Sood

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Gaurav Rana, Advocate,
for the petitioner.

JAISHREE THAKUR, J.

1. By this instant petition filed under Section 482 of the Code of Criminal Procedure (**for short 'the Cr.P.C.'**), order dated 18.12.2017 passed by Additional Sessions Judge, Ludhiana, is sought to be challenged, whereby interim maintenance granted under Section 125 Cr.P.C has been reduced from ₹7,000/- per month from the date of the petition to ₹5000/- per month , as allowed by the Judicial Magistrate 1st Class, Ludhiana.

2. Briefly put, a marriage was solemnised between the parties on 14.12.2013. However, a matrimonial dispute arose between them on account of demand of dowry. The petitioner thereafter instituted petition under Section 125 Cr.P.C along with an application praying for maintenance to be awarded at the rate of ₹20,000/- per month. It was alleged that the respondent husband was running a restaurant at Kapurthala and earning more than ₹50,000/- per month, and apart from this, he was also doing a

side business of sale and purchase of cars. From this business he was

earning a sum of ₹20,000/- per month. This was denied by way of filing reply, wherein it was stated that he worked as a waiter for a short period in a hotel and thereafter got a job with Rail Coach Factory at Kapurthala. It was stated that, in fact, it is the petitioner who was working as an LIC agent and earning ₹15,000/- per month, and therefore could not claim maintenance. The JMIC Ludhiana, after hearing both parties, by order dated 11.4.2017 allowed maintenance of ₹7,000/- per month from the date of application, which order was challenged in a revision petition filed by the respondent husband. The amount of ₹7,000/- per month was reduced to payment of ₹5,000/- per month. Aggrieved against the said order, the instant petition has been filed.

3. Learned counsel appearing on behalf of the petitioner contends that the reduction in the interim maintenance as awarded is wholly illegal and against the facts of the case. It is urged that the petitioner has no source of income of her own and is wholly dependent upon the interim maintenance as awarded. It is further submitted that the respondent husband is earning adequately, which fact was taken into consideration at the time of awarding maintenance by the Judicial Magistrate 1st Class, Ludhiana.

4. I have heard the counsel for the petitioner and have also perused the order under challenge. The JMIC, while awarding interim maintenance, had taken into account the allegation raised that the respondent on his return from Australia was running a restaurant and opined that he could easily earn ₹20,000 /- per month. It is on this basis that amount of ₹7,000/- per month was fixed as interim maintenance.

However, the Additional Sessions Judge reduced the amount to ₹5,000/- per

month.

5. The Additional Session Judge, while reducing the amount of maintenance, took note of the fact that there was no evidence on the record to substantiate that the respondent husband was in fact running a restaurant. It was noted that the name and the locality of the restaurant was not mentioned in the application and in the absence of such evidence, it could not be held that the respondent was earning such an amount. Similarly, there was no evidence that there was any income from the sale and purchase of cars. Relying upon the document as furnished by the respondent that he was working with Rail Coach Factory at Kapurthala and drawing a gross salary of ₹8700/- per month, the interim maintenance awarded was reduced.

6. It is true that the petitioner wife is entitled to maintenance under Section 125 Cr.P.C if she is in a position to establish that she has been neglected by the husband. It is also the moral duty of the husband to maintain his wife, but the maintenance is to be allowed by the courts on the basis of his earnings and his income. In the instant case, when presently there is nothing on the record to establish that the respondent is earning a substantial amount through the business of restaurant and sale and purchase of cars, the certificate of the respondent showing that he was earning only ₹8,700/- could not be ignored. Therefore, the amount of monthly maintenance assessed at the rate of ₹7,000/- per month was highly excessive.

7. Finding no infirmity in the orders so passed, the instant petition filed under Section 482 Cr.P.C is hereby dismissed. However, before parting with this order, it is needless to mention that any observations made herein

are purely for the purposes of deciding the instant petition and not an order on the merits of the case. The maintenance is to be decided as per the evidence produced before the trial court.

11.7.2018

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No