

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

CRM-M-39840 of 2015 (O&M)  
Date of Decision: April 5, 2018

Mohammad Shahid

...Petitioner

Versus

Shahnaz and others

...Respondents

**CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR**

Present:- Mr. Samir Rathaur, Advocate  
for the petitioner.

Ms. Manjit Kaur Sandhu, Advocate  
for the respondents.

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**JAISHREE THAKUR, J.**

1. The instant petition has been filed under Section 482 Cr.P.C. for quashing of impugned order dated 24.05.2014 passed by the Judicial Magistrate Ist Class, Chandigarh in petition No.1295 of 09.02.2007 and impugned judgment dated 28.09.2015 passed by the Additional Sessions Judge, Chandigarh in Criminal Revision No.182 of 2014.

2. In short, a marriage was solemnized between petitioner-Mohammad Shahid and respondent No.1-Shahnaz on 29.05.1989 as per Mohammedan rites and ceremonies. Out of this wedlock, six daughters i.e. respondents No.2 to 7 were born. On account of matrimonial differences,

the parties got divorced in the month of August, 2006. Thereafter, the respondents filed a petition under Section 125 of Cr.P.C. claiming maintenance against the petitioner, which petition was allowed by the Judicial Magistrate Ist Class, Chandigarh on 24.05.2014 awarding maintenance @ ₹ 10,000/- per month to respondent No.1 and @ ₹ 3000/- per month each to respondents No.6 and 7. However, respondents No.2 to 5 were denied maintenance on the ground that they have attained majority. The said order passed by Judicial Magistrate Ist Class, Chandigarh was challenged in revision by the petitioner herein, however, the same came to be dismissed by the impugned order dated 28.09.2015 by the Additional Sessions Judge, Chandigarh. Feeling aggrieved, both the aforesaid orders have been challenged in the instant petition.

3. Mr. Samir Rathaur, learned counsel appearing on behalf of the petitioner argues that both the courts below failed to appreciate the fact that petitioner herein has suffered continuous agony at the hands of respondent No.1 and her brothers as well as other relatives. It is submitted that the petitioner has been turned out of his own house by the respondents, who are still holding possession of the same. It is contended that the petitioner has suffered acute pain and agony through an FIR No.380 dated 02.09.2006, registered at Police Station Manimajra, Chandigarh, under Sections 498-A, 506 of Indian Penal Code, by respondent No.1, in which the petitioner stands acquitted vide judgment dated 24.04.2009. It is argued that both the courts below failed to appreciate the fact that respondents were never neglected by the petitioner, rather, the respondents turned the petitioner out

of his own house. It is stated that the respondents are residing in the said house without paying any rent etc. in fact, they have given the first floor of the said house on rent and are earning substantial income from the same. It is also contended that the petitioner herein is working as a Sofa-set repairer, by doing the labour work and has to maintain his own family. It is submitted that the courts below have failed to consider and appreciate the fact that respondent No.1 failed to prove on record the monthly income of the petitioner.

4. Per contra, Ms. Manjit Kaur Sandhu, learned counsel appearing on behalf of the respondents argues that the petitioner re-married on 05.04.2005 and neglected to maintain the respondents. It is submitted that thereafter a complaint was filed by respondent No.1 in the Women Cell, where the matter was compromised and the petitioner agreed to pay ₹ 5500/- per month as maintenance, however, he failed to pay a single penny to the respondents. It is contended that the petitioner is earning handsomely and the orders passed by the courts below are well reasoned and there is no ground made out to interfere with the same.

5. I have heard learned counsel for the parties and have also perused the record of the case.

6. The trial court, by the impugned order dated 24.05.2014, while allowing the petition filed under Section 125 Cr.P.C., has observed as under:-

*“From the entirety of the evidence on record, it is established that the petitioner and respondent were married to each other and as per section 125 Cr.P.C.*

*even a muslim divorced wife is entitled to maintenance. The respondent states that he is earning around Rs.3000/- to 4000/- pm but the passbook of the Central Bank of India placed on record shows that even in the year 2002 there were cash deposits of Rs.12,000/- and subsequently in the other months of year 2003, there were cash deposits of Rs.15,000/- in the month of September, October, November and similarly in January and February 2004 there were cash deposits of Rs.17,000/- and Rs.15,000/-. For the subsequent years there were entries of Rs.10,000/-, some time deposited in the same month twice and subsequent entries of Rs.10,000/- and Rs.25,000/- were made till the year 2005. Similarly, in the passbook Ex.PY regarding the account of the respondent maintained with the Punjab National Bank shows that in the year 2002 itself there were several deposits of Rs.15,000/-, 2500/-, 6360/- in the year 2003, there were cash deposits totaling near about 17,000/- 18,000/-. Similarly regularly deposits were made till the year 2005. A total balance of Rs.2,44,797/- was being maintained. The last entry pertaining to 16.12.2005 shows that an amount of Rs.2,21,796/- was being maintained in the given account. It is pertinent to note that these amounts were being deposited at the same time by the respondent in both these passbooks simultaneously during the same period of time. It shows that even in the year 2005 the respondent was earning sufficiently. It can be well imagined that he is earning handsomely since he is maintaining his new family which consists of four to five family membrs. It is a settled law that husband is bound to maintain his wife and since the petitioner is able to establish that the husband of the petitioner*

*Mohd. Shahid is earning reasonably well, the present petition is allowed and it is hereby held that petitioner No.1 is entitled to maintenance of Rs.10,000/- per month. The petitioners No.6 to 7 Khusboo and Alfisha are still minor and they are entitled to maintenance of Rs.3000/- each. As discussed above, petitioners no.2 to 5 (sic. ) attained majority, therefore, they are not entitled to any maintenance. Present petition is disposed of in the aforesaid terms. File be consigned to the record room.”*

The revision petition filed by the petitioner was dismissed by the Additional Sessions Judge, Chandigarh, holding that “*the impugned order dated 24.05.2014 does not suffer from any infirmity and hence the same is hereby affirmed. The revision is dismissed.....*”

7. An argument has been raised by learned counsel for the petitioner that much and undue weight has been given to the passbooks of the petitioner, however, the same were never put to the petitioner. It is submitted that both the courts below have wrongly and illegally imagined that the petitioner is earning handsomely. It is also argued that nothing has been brought on record by respondent No.1 to substantiate the plea that the petitioner herein is working as a contractor and that there are number of employees working under him. It is also contended that the petitioner has re-married and has to maintain his family consists of four to five members and the amount of maintenance awarded by the courts below is highly excessive.

8. Section 125 Cr.P.C. contains summary and quick remedy for securing some reasonable sum by way of maintenance, thereby to protect

the destitute wife/minor child/old age parents against starvation. These provisions are intended to fulfill a social purpose. By providing a simple speedy but limited relief, the legislation seeks to ensure that the neglected wife and children are not left destitute and thereby driven to a life of vagrancy, immorality and crime for their substance.

9. In a recent pronouncement in the case of **Kalyan Dev Chowdhury vs. Rita Dev Chowdhury, reported as 2017(2) RCR (Civil) 1033**, the Apex Court has observed that:-

*“25% of the husband's net salary would be just and proper to be awarded as maintenance to the respondent-wife. The amount of permanent alimony awarded to the wife must be befitting the status the status of the parties and the capacity of the spouse to pay maintenance. Maintenance is always dependent on the factual situation of the case and the court would be justified in moulding the claim for maintenance passed on various factors.”*

In the said case, the Apex Court while taking note of the fact that in February, 2016, the net salary of the husband was ₹ 95,000/- per month, has observed that the High Court was justified in enhancing the maintenance amount. However, since the appellant has also got married second time and has a child from the second marriage, in the interest of justice, the Apex Court reduced the amount of maintenance of ₹ 23,000/- to ₹ 20,000/- per month as maintenance to the respondent-wife and son.

10. It is correct that the status and the capacity of the spouse to pay maintenance has to be taken into account while assessing maintenance,

since the husband cannot be absolved of his moral responsibility to support his wife. A perusal of the impugned orders passed by the courts below go on to show that there is no proof of monthly income of the petitioner on the record. In the case in hand, after giving divorce to respondent No.1, the petitioner has re-married and has to maintain his family as well, which consists of five to six members. Admittedly, the petitioner herein is working as Sofa-set repairer and there is no proof of his monthly income. On the basis of entries reflected in the passbook of the Central Bank of India and Punjab National Bank, the accounts being maintained by the petitioner herein, an amount of ₹ 10,000/- per month has been awarded to respondent No.1, apart from ₹ 3000/- per month each to respondents No.6 and 7. As per the trial court, in the passbook of Central Bank of India placed on record, there were entries of the amount of ₹ 10,000/- or at times of ₹ 12,000/- or ₹ 15,000/- or ₹ 17,000/- timely in different months. Whereas, in the passbook of Punjab National Bank, there were several deposits of ₹ 15,000/-, ₹ 2500/-, ₹ 6360/- in the year 2003, there were cash deposits totaling near about ₹ 17,000/- to ₹ 18,000/- and a total balance of ₹ 2,44,797/- was being maintained. None of these entries reflect a steady monthly income.

11. Admittedly, the petitioner herein is working as a Sofa-set repairer and by no stretch of imagination, it be said that he has a fixed income or salary every month. A person may or may not have a regular assignment. After going into these entries, even if for the sake of arguments, it is assumed that on an average basis, after meeting the day-to-day expenses of his second family, the petitioner herein has been able to save ₹ 10,000/-

per month, he has been held liable to pay ₹ 10,000/- per month to respondent no.1 and ₹ 3000/- per month each to respondents No.6 and 7. While awarding the said amount of maintenance, both the courts below lost sight of the fact that the petitioner herein has since re-married and has to maintain his second family as well, which consists of five to six members. Though, respondent No.1 has claimed that the petitioner herein is working as a contractor, there is no evidence on the record to substantiate this plea. Rather, the petitioner herein has claimed that the house where the respondents are staying belongs to him, which fact has not been denied. Besides the instant case, respondent No.1 has also lodged an FIR under Sections 498-A, 506 of Indian Penal Code against the petitioner herein, however, in the said case the petitioner stands acquitted on 24.04.2009 on the ground that complainant i.e. respondent No.1 herein did not support the case of the prosecution, and therefore, she was declared as hostile.

12. After taking into consideration all these factual situation of the case and other factors, this court is of the considered view that interest of justice would be met if the amount of maintenance amount of ₹ 10,000/- awarded to respondent No.1 is reduced to ₹ 7000/- whereas, the amount of ₹ 3000/- each awarded as maintenance to respondents No.6 and 7 is reasonable and justified.

13. In view of the foregoing discussion, the amount of maintenance awarded to respondent No.1 is reduced from ₹ 10,000/- per month to ₹ 7000/- per month and the impugned orders passed by the courts below are modified and the petition in hand stands partly allowed accordingly. The

reduction in the maintenance payable will be from the date of filing the instant criminal miscellaneous petition.

**April 5, 2018**  
*vijay saini*

**(JAISHREE THAKUR)**  
**JUDGE**

Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No