

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

CRR-1096-2010(O&M)

Date of decision:-17.8.2018

Khushi Ram

...Petitioner

Versus

Smt.Shanti Devi

...Respondent

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

Argued by: Mr.Nipun Verma, Advocate for
Mr.Mani Ram Verma, Advocate
for the petitioner.

Mr.Vikrant Rana, Advocate
for the respondent.

H.S. MADAAN, J.

Petitioner Shanti Devi had filed a petition under Section 125 Cr.P.C. against her husband Khushi Ram, which was allowed by District Judge, Family Court, Bhiwani vide judgment dated 14.11.2009 and maintenance @ Rs.1,000/- per month was awarded to the petitioner payable by respondent from the date of order.

Feeling aggrieved, the respondent had filed an appeal to this Court. However, in terms of observations made by a Division Bench of this Court that appeal against the judgment was not maintainable and

revision should have been filed, the appeal was ordered to be treated as revision, notice of which was given to the respondent, who put in appearance.

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

The main grouse of the revisionist is that he had purchased sufficient land in the name of his wife Shanti Devi and she is earning a lot of money from that land, as such IS not entitled to any maintenance, though the revisionist is giving maintenance to her without any receipt; that the revisionist has divorced her by obtaining an ex parte decree for divorce, though he is still ready to keep her; that the judgment passed by the Court below is being condemned for the reason that no finding has been given that the revisionist has neglected and refused to maintain his wife, who is unable to maintain herself.

Whereas, these contentions are controverted by learned counsel for the respondent – wife while defending the impugned judgment stating that there is no merit in the revision petition.

After hearing learned counsel for the parties, I find that relationship between the parties is not disputed so is the fact that they are residing separately. According to the revisionist, he has divorced Shanti Devi by obtaining an ex parte decree. Even if it is so, a divorced wife is entitled to get maintenance till she is re-married. The petitioner has come up with a very strange offer that despite divorce, he is ready to keep Shanti Devi, which is certainly not possible legally as well as morally. A perusal of the judgment passed by the trial Court goes to show that Shanti

Devi had taken up a specific plea that her husband Khushi Ram is living with widow of their pre-deceased son Ishwar having illicit relations with her and he has neglected and refused to maintain her despite the fact that she is unable to maintain herself and is residing with his son Ram Avtar, who is a handicapped person having three children; that the wife of Ram Avtar is also handicapped. As per the case of petitioner, respondent being an Ex. Serviceman has been getting Rs.15,000/- per month as pension but has refused to maintain the petitioner. The stand taken up by respondent before the trial Court was in the form of denial having illicit relations with widow of his pre-deceased son Ishwar. He had mentioned that he has obtained an ex parte decree of divorce against petitioner vide judgment and decree dated 15.5.1997. He had taken up a stand that petitioner owns and possesses agricultural land measuring 1.01 hectare with tube-well connection in village Bhosli(Rajasthan) besides having five acres of agricultural land in village Hetampura, therefore, has sufficient source of income. Both the parties had led evidence. The observations made by the trial Court in paras No.12 and 13 are very relevant and are being reproduced as under:

12. Petitioner Shanti Devi admittedly is the divorced wife of the respondent. It is not the case of the respondent himself that she got remarried, hence being divorced wife, she is entitled to maintain by the respondent. No doubt from the copies of various Jamabandies and sale deeds, produced on the record by the respondent this fact is established that the petitioner owns 21 Kanals of agricultural land at village

Bhaisali, Tehsil Rajgarh, District Churu and another five acres of agricultural land in village Hetampura. Though it is not conclusively established by the sole testimony of respondent Khushi Ram, being uncorroborated by the persons who took the land of petitioner on lease on certain amount, yet the petitioner must be earning from the agricultural land measuring five acres and 21 Kanals owned by her in village Hetampura and village Bhaisali. The petitioner has nowhere stated that she is not cultivating the land owned by her.

13. However, the respondent has retired as Honorary Captain from the Military from Ahamad Nagar. He has also admitted that his wife and children of his deceased son Ishwar are dependent upon him. He has gone saying to the extent that he is giving maintenance to the petitioner. However, no receipt or any other evidence has been produced on the file to prove this fact that respondent has admitted that he is getting total pension of Rs.17,000/-. It is well settled that petitioner has a right to lead a life befitting of divorced wife of a retired Honorary Captain. Thus, though petitioner has her own source of income yet to lead a life which she is entitled to live, she is also entitled to be maintained by the respondent.

Section 125 Cr.P.C. deals with orders regarding maintenance of wife, children and parents. It provides that if any person having

sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) x x x

(c) x x x

(d) x x x

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

The *sine qua non* of this provision is that the wife should be unable to maintain herself. In the instant case, the trial Court has observed that wife owns and possesses agricultural land measuring 21 kanals with tube-well connection in village Bhosli(Rajasthan) besides having five acres of agricultural land in village Hetampura so about 8 acres of land in total. She can derive sufficient income from such land by cultivating it herself or by giving it on rent. In that way, it can certainly be not taken that she does not have any source of income or is unable to maintain herself.

Under the circumstances, the trial Court clearly fell in error in awarding monthly maintenance amount to the petitioner, when she was not entitled to it. The judgment passed by the Court below is not sustainable having been passed ignoring the ingredients required for grant of maintenance to a deserted wife.

The revision petition is accepted and the order under revision is set aside. Consequently, petition under Section 125 Cr.P.C. stands

dismissed.

Since the main revision petition stands allowed, the miscellaneous application, if any, stands disposed of accordingly.

17.8.2018

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No