

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM M-41631 of 2015 (O&M)
Date of Decision: December 13, 2018

Raj Kumar

.....Petitioner

Versus

Raj Rani and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Deepak Aggarwal, Advocate
for the petitioner.

Mr. Kashish Garg, Advocate
for respondent No.1.

None for respondents No. 2 and 3.

Mr. Dhruv Dayal, Senior DAG, Punjab
for respondent No.4-State.

FATEH DEEP SINGH, J.

This petition under Section 482 Cr.P.C. has come about by the petitioner-husband Raj Kumar against his wife-respondent No. 1 and others whereby he has sought to challenge an order dated 08.10.2015 (Annexure P-25) passed by the learned Court of Additional Sessions Judge, Bathinda, whereby, the revision petition of the husband stood dismissed, consequently, upholding the order dated 15.07.2015 (Annexure P-22) of the Court of learned Judicial Magistrate 1st Class, Bathinda, passed in application under Section

12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act').

Heard Shri Deepak Aggarwal, learned counsel for the petitioner and Mr. Kashish Garg, Advocate for respondent No.1 and perused the records of the case.

Wife-Raj Rani instituted an application under Section 12 of the Act alleging therein that she was the legally wedded wife of petitioner/respondent No.1 and out of this wedlock a child Sona Rani had been born to the couple. It is alleged by the wife that the husband had neglected, deserted and refused to look-after the dependent wife and the minor child. Being unable to maintain themselves owning no income or any immovable property were totally dependent for the survival upon the husband. The wife claimed that husband was able bodied person and owner of vast immovable properties, which are commercial in nature and, thus, has cash reserves and, therefore, sought the relief in question to enable the dependents to make both the ends meet. The respondent/husband though admitted the *inter-se* relationship with the applicants but alleged that it was on account of the act and conduct of the wife since the year 1997 they were residing separately and that at no point of time the husband has ever refused to look-after the dependents or deserted the wife. He has further alleged that his wife is also working as “Aganwari” worker and owned sufficient means to maintain herself. As a consequence of the stands of the two sides and the evidence brought before it, the Court below had drawn

conclusion that the husband owns sufficient properties movable as well as immovable and had sufficient economic capacity and, therefore, ordered a sum of Rs.3,000/- per month to the applicant, a sum of Rs.2,000/- to the daughter in all totalling to Rs.5,000/- per month for both of them as maintenance allowance from the date of the institution of the petition and further burdened the husband with Rs.1.000/- as litigation expenses.

It is against these findings the husband feeling aggrieved had knocked at the doors of the Court of the learned Additional Sessions Judge, Bathinda under the aid of Sections 397 and 399 Cr.P.C. by filing a revision petition challenging the order of the Courts below. It is through the impugned order Annexure P-25, the appellate Court has upheld the orders of the learned Judicial Magistrate 1st Class, Bathinda and, thus, dismissed the revision. That is how the parties are before this Court in this invocation.

Appreciating the submissions of the counsel for the petitioner, who has sought to seek support from statement of Raj Rani by way of Annexure P-6 arguing that she has put a rider that in case the husband deposits a sum of Rs.3,00,000/- in the name of her daughter within one month under monthly income scheme in the City Post Office, Bathinda, where monthly interest accrues, she would withdraw the case filed by the daughter against the husband and that she would not file any suit for maintenance on account of the same. It is further contended by the petitioner side by seeking support from the order of learned Judicial Magistrate 1st Class

Annexure P-22 whereby in the concerned para in the order passed by the learned Magistrate, the maintenance has been calculated to drive home the point that it was much more than the economic capacity of the husband. These submissions have sought to be refuted by much force and vehemence by Mr. Kashish Garg, Advocate representing respondent No.1 on the ground that the maintenance being a vested right in a wife and a minor dependent daughter who both are dependents of the husband cannot be foregone by any means and that the amount so awarded was way back in the year 2015 and with the escalation of life rising trend of prices of essential commodities and day to day price index and living necessities, this amount is the bare minimum required to make both the ends meet.

Going through the submissions and appreciating the same in the light of the relative stands of the two sides and the evidence led on the records, the counsel for the petitioner could not convince this Court as to any illegality or impropriety as to the correctness of the findings of the two Courts below, which are concurrent on this score. A dependent daughter of school going/educational needs such an amount of Rs.2,000/- is a mere pittance and cannot by any means be shown to be on higher side. Even, the sum of Rs.3,000/- so awarded by the Court in favour of the wife is similarly hardly able to cover bare minimum needs of a grown up lady. The provisions are welfare in nature for the betterment of the dependents. The contentions of the counsel for the petitioner that the wife in her statement has sought to forego the

right of the minor daughter certainly needs to be brush aside without even giving a second thought to do it when it is well settled proposition of law, reliance of which can be placed on **Bai Tahira Vs. Ali Hussain, AIR 1979 SC** as well as on **Rajesh Kumar Vs. Sahil Sawheny and others 2009 (1) CLR 320; Sushil Kumar Vs. Neelam 2004 (2) RCR (Criminal) 760** that right to maintenance is the very element of right to life and liberty enshrined in Article 21 of the Constitution of India. One cannot take such a stand so as to forego such a valuable inalienable right of the minor child, that too, a daughter. Further, it is not the stand of the petitioner's counsel that husband has fulfilled this obligation and rather speaks volumes about the total insolence and arrogance shown by the husband and the father, respectively, of these dependents being bestowed upon considerable wealth moveable as well as immovable. His miserliness is much evident when that he had even the audacity to challenge such a pittance before this Court and, therefore, putting the wife and daughter to much pain and grief as well as torture which cannot escape judicious notice. What is reflective from the records of the conduct of the petitioner shows that by mere use of his money power, manly influence he is trying to brow beat these two poor dependents a lady and the minor girl child by forcing them to put in appearance before this Court rather cannot be taken lightly.

The provisions of Section 482 Cr.P.C. are purely and purely to undo any injustice that might have been caused and which is necessitated to meet ends of justice and to ensure that no undue

prejudice is caused to the party and cannot be used as a sinister implement by getting on to a petition prior to which husband has exhausted statutory channels by devising another way of reopening a matter which clearly on the face of it does not deserve any indulgence by this Court and rather to the mind of the Court is purely and merely misuse of the process of the Court and unnecessarily burdening this Court for such a small matter, which is of not much importance and significance and rather is inconsequential. The petition certainly being a motivated one by way of wrecking vengeance has no merits and needs to be dismissed at the very threshold, however, to adequately compensate the other side, it would meet the ends of justice if Rs.30,000/- is imposed as special costs to the petitioner, which shall go to the respondent-wife.

December 13, 2018
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No