

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

**CRM-M No. 8864 of 2016 (O&M)
Date of Decision: January 29, 2018**

Sukhbeer Kaur

..Petitioner(s)

Versus

Jatinder Singh @ Dimple

..Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Peeush Gagneja, Advocate
for the petitioner.

None for the respondent.

ANITA CHAUDHRY, J.

This is a petition assailing the order dated 10.12.2014 (Annexure P-2) and order dated 03.10.2015 (Annexure P-3), passed on the application filed under Section 125 Cr.P.C.

The marriage of the petitioner was solemnized with the respondent on 13.06.2010. The allegations were that the petitioner was turned out of the house some time in June 2011. It was claimed that the respondent was a big agriculturist and had a dairy farm and finance business and had income of Rs.1 lac per month. In her application, the petitioner did disclose that she was a teacher but beyond that she did not disclose her income.

The respondent pleaded that the petitioner was a Government Teacher and her last drawn salary was over Rs.32,000/- i.e. in October 2011 and she did not require any amount and she was guilty of concealment of material facts. It was pleaded that the respondent came to know that the petitioner was suffering from polio and this fact was revealed only on the wedding night and the marriage was not consummated and the petitioner was guilty of abandoning the respondent within few days of marriage. It was pleaded that it was a simple marriage and no gifts or Istridhan were exchanged.

Both the parties led evidence. From the side of the petitioner, Sukhbir Kaur stepped into the witness box and also examined her brother and her cousins. The respondent examined himself and produced the salary certificate of the petitioner. The respondent also examined Devi Lal who owns land adjoining the land of father of Jatinder. He disclosed that the petitioner had stayed in the house of the respondent only for 2 – 3 days.

The parties were married in 2010. The appointment letter of the petitioner was produced in evidence to show that she was in government job since 2001. The Magistrate noted that there was no evidence with respect to the income of the respondent and he was not doing any job. It also noted that there was no evidence that he was having any business or any dairy farm or owned any land and finding the income of the wife to be sufficient the petition was dismissed.

A revision was preferred by the wife, which too came to be dismissed.

Counsel for the petitioner urged that the husband was working before marriage and he had admitted in his statement that he was doing a private job in a telecom company but he withheld the information with respect to his salary and only admitted that he was getting Rs.5,000/- per month and he immediately left the job the following month and his income was more than Rs.1 lac and both the Courts below have ignored the fact and have dismissed the application. It was urged that simply because the wife was working, was not a good reason for denying maintenance. Reliance was placed upon ***Simaben Maheshbai Soni Vs. State of Gujrat R/CR.MA/ 18957/2015, DOD 21.10.2015 and Sunita Kachwaha and others Vs. Anil Kachwaha 2014(4) RCR (Criminal) 831.***

It was urged that in Sunita's Kachwaha's case (supra), the Apex Court had held that merely because the wife was earning was not a ground to reject the claim and the Supreme Court had directed the husband to pay maintenance to the wife.

It would be necessary to refer to Section 125 Cr.P.C., which reads as under:-

Section 125. Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain-

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

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, 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:

Provided that the Magistrate may order the father of a minor female child referred to in clause

(b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Explanation: - For the purposes of this Chapter:-

(a) " minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875); is deemed not to have attained his majority;

(b) " wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month' s allowances remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made: Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife' s refusal to live with him.

(4) No Wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

The object of granting maintenance is to prevent vagrancy and compel the party to provide support to those who are unable to support themselves. The phrase “unable to maintain her” would mean that the means which are available to the wife are not sufficient/enough to maintain herself. Under the law the burden is first placed upon the wife to show that the means of her husband are sufficient.

In the present case, the wife failed to lead evidence to show that the husband had sufficient means. It was claimed that he was earning Rs.1 lac per month and had dairy and finance business besides it he was getting salary from a telecom company. The wife did not summon any person from the telecom company nor produced the Jamabandis to show the area owned by him. She did not produce the income tax returns or the bank statements. The wife on her part concealed her own income in her petition. The husband brought her salary certificate on record to show that she was getting monthly salary of over Rs.30,000/-. During the course of submissions it was stated that the husband was a graduate.

Considering the evidence, it cannot be said that the wife was not in a position to maintain herself. It had to be established that she was unable to maintain herself. Even if it is taken that the husband was a graduate, his income could be taken to be that of a skilled worker but there is inseparable condition that had to be satisfied that the wife was unable to maintain herself. The husband had placed material to show that the wife was earning. The amount she is earning is enough to maintain herself.

In *Sunita Kachwaha's* case (supra), it found that the wife was having a post graduate degree and was working as a teacher and also working in the Health Department while the husband was an Engineer and in government service and he was getting salary which was more than the wife. After considering the salary and the economic condition of the husband, the Family Court had awarded maintenance to the wife and to the daughter, which was set aside by the High Court. The Supreme Court allowed the appeal filed by the wife and set aside the order passed by the High Court and restored the order of maintenance passed by the Family Court.

There is nothing in the provisions to show that in determining the maintenance and its rate the Magistrate has to inquire into the means of the husband alone and exclude the means of the wife altogether from consideration. Rather there is a definite indication in the laws that the financial resources of wife are also a relevant consideration. The words used in Section 125(1)(a) Cr.P.C. are 'unable to maintain herself'. The facts of each case have to be examined. In the present case, the petitioner has been unable to show that she is unable to maintain herself. She has not been able to show the income of the husband. Therefore, I find no infirmity in the orders passed by both the Courts below.

The petition is dismissed.

January 29, 2018

Sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No