

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

CRR No.352 of 2013

Date of decision: 31st october, 2018

Neel Kanth Sharma

... Petitioner

Versus

Bala Devi

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. A.P. Bhandari, Advocate for the petitioner.

Mr. Arvind Bansal, Advocate for the respondent.

FATEH DEEP SINGH, J.

This is a revision petition by petitioner Neel Kanth Sharma husband who has impugned against the wife respondent Bala Devi a finding of the Court of learned Sessions Judge, Kaithal dated 22.12.2012 whereby the Court below had set aside the orders dated 14.11.2011 of learned Judicial Magistrate 1st Class, Kaithal.

Upon hearing learned counsel for the petitioner Mr. A.P. Bhandari, learned counsel representing the respondent Mr. Arvind Bansal and on perusal of the records. The initial applicants, Bala Devi and her minor son Bharat filed an application under Section 125 Cr.P.C. against the husband, then respondent Neel Kanth Sharma on the grounds that the husband was earning handsomely as he was posted as Junior Engineer in a Government Department and they were unable to make both ends meet

nor had any movable or immovable property. It is worthwhile to refer here that as per the undisputed stand, the husband was initially married and had two grown up sons from that marriage. Upon demise of the first wife, the petitioner husband entered into a wedlock with the present petitioner out of which a son namely Bharat stands born. On account of matrimonial disaccord, the wife was thrown out of the matrimonial home leading to filing of the application. In the evidence, the wife had examined PW1 Dhara Ram, Accounts Clerk from the office of XEN, Indri Water Services Division, Karnal to prove the pay bill Ex.P1 and thereafter the wife Bala Devi testified as PW2 reiterating through her affidavit Ex.AW2/A her stance proving documents Ex.P1 to Ex.P7 and thereafter closed the evidence.

The husband in his evidence, examined himself as RW1 through affidavit Ex.RW1/A and examined RW2 Ishwar, his friend, and RW3 Asmita his daughter, RW4 Sunil Kumar to prove the employment of the wife proving booking slips Ex.R1 and Ex.R2. After providing documents Ex.R1 to Ex.R5 and Mark R3, the husband closed his evidence. It was thereafter, the impugned findings of the learned Judicial Magistrate 1st Class, Kaithal denying maintenance to the wife and allowing Rs.3,000/- to the minor son have come about. The same were challenged by the wife before learned Sessions Judge by way of revision and by the impugned findings, the Court below had allowed the revision

upholding the order of maintenance qua the son and allowing maintenance to the wife at the rate of Rs.2,000/- per month. The same is subject matter of challenge before this Court.

It is not in any manner rebutted successfully by the petitioner's counsel Mr.A.P. Bhandari, Advocate that the petitioner at the time of filing of maintenance application was working in a Government department posted as a Junior Engineer. His salary slip Ex.P1 irrefutably shows that he was as per Ex.P1/P5 getting Rs.37,290/- per month at that time when this document was proved. The argument that has been sought to be raised by Mr.Bhandari is that there are other deductions including loan secured by the husband, which has been well displaced by the learned counsel for the respondent Mr. Arvind Bansal, Advocate arguing that it is the income of the husband which is to be seen and not his other liabilities arising out of loan and deductions as per his own sweet will, which are amenable to payment accumulated with interest in various funds. Learned counsel for the petitioner could not convince this Court how the carry-home salary is to be taken into account.

The second rallying point that has come about in the submissions which have been argued vehemently by the petitioner side revolves around passing of a decree for restitution of conjugal rights against the wife under Section 9 of the Hindu Marriage Act. It is there and is well elicited even in the findings of the Court below that the

husband had filed a petition under Section 9 of the Hindu Marriage Act and that the decision went against the wife who has filed an appeal against that decree which is pending before this Court thus, the claim of the petitioner side and the arguments canvassed by the respondent's counsel that the same has not attained finality, certainly is a fact which goes against the husband. To the specific query of the Court, what steps have been taken by the husband in implementing this decree of restitution of conjugal rights by resort to execution in terms of Order XXI Rule 32 CPC, the counsel was purely at loss of words, and therefore, this argument of the petitioner side certainly falls to the ground.

It is admitted stand of the husband that Bala Devi is his second wife after death of his first wife and out of which wedlock minor son Bharat has born. The Court of learned Judicial Magistrate 1st Class lost sight of the fact that the decree of restitution of conjugal rights passed in favour of the husband has not attained finality and there is no effort by the husband to give effect to it and there was neither any semblance of evidence to show that the husband made efforts to get the same implemented and the wife in spite of reasonable opportunity has failed to comply with this decree and thus, such a submission does not hold much ground for the petitioner husband.

The Court below had awarded Rs.2,000/- to the wife and Rs.3,000/- per month to the son. The application under Section 125

Cr.P.C. was filed on 08.09.2006 and till date more than 12 years have elapsed though with the rising trend of prices, these amounts have become meager, hardly sufficient enough to support a growing son who is supposed to pursue his further studies and career, and the wife's needs of medicine, food, clothing and shelter at her advance age. However, if so necessitated, they are at liberty to invoke the provisions of Section 127 Cr.P.C. seeking enhancement of the maintenance.

In the light of what has been detailed and discussed above, learned counsel for the petitioner could not point out any substantial cause for this Court to show indulgence. Finding no merit, the revision petition stands dismissed.

(FATEH DEEP SINGH)
JUDGE

October 31, 2018

rps

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