

CRR-1502-2016 (O&M)

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

CRR-1502-2016 (O&M)

Date of decision : 21.02.2018

Naresh Kumar

.....Petitioner(s)

Versus

Rajni

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Ms. Aditi Girdhar, Advocate
for the petitioner.

None for the respondent.

ANITA CHAUDHRY, J(ORAL)

The petitioner has assailed the orders passed by both the Courts below.

It is necessary to have the facts first. The parties were married in 2005 and a child was born to them in 2007. Differences cropped up between them and the wife left in March 2007 and joined the company of the husband in October 2010. The husband filed a divorce petition in March 2012. During the pendency of the divorce petition a complaint was lodged by the wife under the Domestic Violence Act. Meanwhile, the wife also got the FIR registered under Sections 498-A, 406, 506, 34 IPC.

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In the application filed under Section 24 of the Hindu Marriage Act in the divorce proceedings the Court awarded maintenance of Rs.5,000/- per month to the minor child. The order was challenged in a revision in the High Court and it was set aside.

The Judicial Magistrate in the application for interim maintenance in the Domestic Violence Act proceedings awarded Rs.3,000/- per month as interim maintenance to the wife. The petitioner challenged the same in a revision which was subsequently treated as criminal appeal. The appeal was dismissed on 11.03.2016 and the order was maintained.

No-one is appearing for the respondent for the last 2 – 3 dates.

Counsel for the petitioner submits that the wife is a Assistant Professor in Kalindi College in Delhi and was getting salary of more than Rs.70,000/- per month and she was taking coaching classes in mathematics as she is M.Phil. in mathematics. Counsel submits that the wife owned a flat in Omaxe City in Sonapat and she was getting rental income of Rs.20,000/- per month and she has sufficient resources to maintain herself and the minor child and the petitioner is jobless and had no source of income and did not even have a house. The counsel submits that the petitioner bore the expenses of education of the wife during marriage when she was pursuing her studies at Hisar. The counsel submits that the High Court had set aside the order awarding maintenance to the child in the petition filed under Section 24 of the Hindu Marriage Act. The counsel had referred to Annexure P-1, the order passed in Civil Revision decided on 14.12.2015.

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The wife is a Assistant Professor. She has chosen not to contest the petition here though she had notice of it. She has an income of over Rs.70,000/- per month. She had claimed maintenance from the husband pleading that she was unable to maintain herself and the child but failed to place any document to show the income earned by the husband. The Magistrate without ascertaining the income had awarded maintenance. The respondent did not file reply here to refute the fact that she did not own a flat or had no rental income.

The parties are yet to lead their evidence, therefore, in the absence of any material at this stage to show the income of the husband, the order passed by the Courts below has to be set aside and ordered as such.

Nothing contained hereunder would be taken as an expression on the merits of the case, which may be finally adjudicated on the evidence led by the parties.

The petition is allowed.

21.02.2018
sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No