

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

Crl. Revision No. 2864 of 2015 (O&M)
Date of Decision: November 15, 2018

Sunil Sharma

...Petitioner

Versus

Babita @ Pinki and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Devinder Singh, Advocate
for the petitioner.

Mr. Tribhuvan Dahiya, Advocate,
for respondent No.2.

JAISHREE THAKUR, J.

The petitioner herein seeks to challenge the order dated 15.1.2013 passed by the Judicial Magistrate 1st Class, Bahadurgarh, in a petition under Section 125 of the Code of Criminal Procedure (for short '**the Code**') as well as the order dated 21.5.2015, whereby the interim maintenance of respondent No.2 stands increased.

In brief the facts are that a petition was filed under Section 125 of the Code claiming maintenance by respondent No.1 Babita for herself and her minor son against the petitioner herein. It was stated that a marriage was solemnized between the petitioner and respondent—Babita on 14.12.2006 and out of this wedlock a son, namely Sagar was born on 25.9.2007. It was claimed that she had been turned out of her matrimonial home and was unable to maintain herself and the minor child and prayed for grant of

maintenance as well as well as ad-interim maintenance.

Notice of the said application was given to the petitioner, who contested the same stating therein that the marriage between the petitioner and the respondent No.1 was a simple one and no dowry was exchanged at that time. It was also claimed that a fraud has been played upon him since respondent No. 1 was already married to one Anoop Sharma, resident of Bhatwara Mohalla, District Meerut. At the time of marriage between the parties, the first husband of respondent No.1 was alive and he expired on 21.4.2008, whereas the marriage between the parties was solemnized in the year 2006. The claim of maintenance was also contested on the ground that respondent No.1 is not legally married wife of the petitioner.

The Judicial Magistrate 1st Class, allowed maintenance at the rate of ₹1500/- per month to respondent No.1 and ₹2,000/- per month to the minor child-respondent No.2 from the date of the institution of the petition. This order was challenged by the petitioner in appeal before the Additional Sessions Judge, Jhajjar and the same was partially allowed to the extent that respondent No.2, namely minor child was allowed maintenance at the rate of ₹3,500/- per month, whereas it was held that the respondent—wife would not be entitled to maintenance as the marriage stood annulled on a petition filed under Section 11 of the Hindu Marriage Act. Aggrieved against the enhancement of maintenance awarded to the minor child—respondent No.2, the instant revision has been filed.

Learned counsel appearing on behalf of the petitioner herein submits that the appellate court has erred in enhancing the maintenance suo motu, especially when no appeal had been filed by the minor child seeking

enhancement.

Per contra, learned counsel appearing for respondent No.2 contends that the Additional Sessions Judge by the impugned order has rightly enhanced the amount of maintenance as awarded to the minor child. It is argued that the appellate court, while hearing an appeal can go into all the questions relating to rights of the parties and has power to affirm, dismiss or modify the order under challenge. In this regard, he places reliance upon a judgment rendered in **Rachakonda Narayana Vs. Ronthala Parvathamma and another 2001 (2) PLJ 420**, in which it has been held that when an appellate court hears an appeal, the whole matter is at large. The appellate court can go into any question relating to rights of the parties which a trial court was entitled to dispose of provided the plaintiff possesses that right on the date of filing of the suit.

I have heard learned counsel for the parties and have perused the impugned orders.

Admittedly, interim maintenance was awarded to respondent No.1 (by the Chief Judicial Magistrate 1st Class) at rate of ₹1,500/- per month and ₹2,000/- was awarded to the minor child. This order was accepted by both the respondents and it is only the petitioner, who preferred an appeal before the Additional Sessions Judge, who held that respondent No.1 is not entitled to claim maintenance from the petitioner as she was not legally wedded wife but enhanced the maintenance from ₹2,000/- to ₹3,500/- payable to the minor child. On appeal being filed by the petitioner, the appellate court at best had two options either to reduce the maintenance already awarded or dismiss the appeal. It appears that the appellate court

has exceeded its jurisdiction while enhancing the maintenance payable to the minor child, particularly when there was no challenge to the maintenance amount so awarded to him. It is well settled law that the interim maintenance is granted on the basis of the documents placed before the court for interregnum period and the parties are yet to lead evidence on the basis of which the court will determine the final maintenance payable. The Additional Sessions Judge has also failed to take into account that it is interim relief that was allowed, however, has treated the matter as if the entire appeal itself was being decided. I have gone through the judgment relied by the learned counsel for the respondent and found that the same is not applicable to the facts and circumstances of the present case. In view of the fact that there was no challenge to the amount of maintenance awarded to the minor child, the appellate court could not have enhanced the maintenance on its own.

Therefore, the present petition is allowed. The impugned order dated 21.5.2015 passed by the Additional Sessions Judge, Jhajjar only to the extent whereby the amount of maintenance payable to respondent No.2—minor child, has been enhanced from ₹2,000/- to ₹3,500/- is set aside. Needless to mention that respondent No.2 shall be entitled to maintenance at the rate of ₹2,000/- per month, as awarded by the Chief Judicial Magistrate 1st Class, Bahadurgarh.

(JAISHREE THAKUR)
JUDGE

November 15, 2018
prem

Whether speaking/reasoned
Whether reportable

Yes
No