

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

**CRR(F)-120-2014 (O&M)
Date of decision: 02.04.2018**

Vikash

...Petitioner

Versus

Sangeeta and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. B. S. Rana, Senior Advocate with
Mr. Rajinder Paul, Advocate
for the petitioner.

Mr. Sunil Chadha, Senior Advocate with
Mr. M. S. Atwal, Advocate
for the respondents.

JAISHREE THAKUR, J.

1. The petitioner herein seeks to challenge order dated 02.05.2014 passed by the District Judge, Family Court, Sonapat wherein interim maintenance, under Section 125 Cr.P.C., has been allowed to the respondents at the rate of ₹10,000/- per month from the date of application.

2. In brief, the facts are that respondents-complainants filed a petition under Section 125 Cr.P.C. seeking maintenance from the petitioner. It was alleged that a marriage was solemnized between Vikash and Sangeeta as per Hindu rites and rituals on 24.04.2012, out of which wedlock, one female child namely Vernika was born. At the time of marriage, a sufficient amount was spent by the parents of Sangeeta, however, on amount of demand for a bigger car and harassment on account of inadequate dowry, she was turned out of her matrimonial home on 23.09.2013 along with the minor child. On account of beatings, harassment and cruelty meted out to

her, FIR No. 477 dated 26.09.2013, under Sections 147, 149, 452, 323, 427 and 506 of the IPC was registered at Police Station Bahadurgarh, District Jhajjar. Having no source of income or means to support herself and the minor daughter, the respondent-wife filed an application for grant of maintenance along with interim maintenance before the Family Court at Sonapat. It was submitted that the petitioner is highly qualified and has done B.Tech and is earning approximately ₹30,000/- to ₹35,000/- per month. The District Judge, Family Court allowed interim maintenance at ₹ 10,000/- per month from the date of application. Aggrieved against the said order, the instant criminal revision petition has been preferred.

3. Mr. B. S. Rana, learned Senior Advocate along with Mr. Rajinder Paul Advocate for the petitioner argues that the Family Court at Sonapat would not have the jurisdiction to entertain the application under Section 125 Cr.P.C. It is argued that respondent and her family never lived at village Turukpur in District Sonapat. The marriage was solemnized between the parties at Bhadurgarh, and even presently the parental home of the respondent wife is at Bhadurgarh and not at Turkpur. It is also argued that the petitioner is a chronic patient of Asthma and unable to work, whereas the respondent is employed as a teacher in Hardayal Public School, Bhadurgarh and is drawing a monthly salary of ₹10,000/- per month apart from earning ₹5,000/- per month from tuition. Learned Senior counsel seeks to place reliance on Voter ID Card issued in the name of Yashwanti Dhayia, mother of the respondent wife, showing her permanent address at Bhadurgarh, as well as the Aadhar card issued to the respondent No. 1 in 2011, wherein residence is shown at Bhadurgarh, District Jhajjar. Moreover, the respondent has already filed a petition under Section 12 of the

Protection of Women From Domestic Violence Act, 2005 at Jhajjar in the year 2013.

4. *Per contra*, Mr. Sunil Chadha, learned Senior Advocate along with Mr. M. S. Atwal, Advocate seeks to place reliance on Voter ID Card issued in the name of Yashwanti, mother of the respondent-wife showing her permanent address at Turkpur, land holding in village Turkpur as well as the admission taken by respondent No. 2, the minor child, in a school at Turkpur. It is also argued that she is no longer working at Hardayal Public School nor is she earning any money from tuition and, therefore, would be entitled to seek maintenance in support of herself and the minor child.

5. Heard the counsel for the parties and with their assistance have perused the pleadings.

6. Admittedly, a marriage has been solemnized between the petitioner and respondent No. 1, out of which wedlock, a female child was born. On account of a matrimonial dispute between the parties, FIR No. 85 dated 19.02.2014, under Sections 498-A, 406, 323, 354, 506 and 34 of the IPC was registered and also proceedings under Section 12 of Protection of Women From Domestic Violence Act 2005 were initiated. An application for maintenance, under section 125 Cr.P.C., was also preferred by the respondent wife claiming maintenance for herself and the minor child, but the proceedings came to be instituted at Turkpur, Tehsil Kharkhoda, District Sonapat. Mr. B.S. Rana, learned Senior Advocate argues that the application filed under section 125 Cr.P.C. ought to be dismissed for want of territorial jurisdiction. It is argued that the respondent wife is a resident at Bahadurgarh in District Jhajjar and, therefore, the application filed at Turkpur, Tehsil Kharkhoda, District Sonapat ought to be dismissed.

7. Section 126 Cr.P.C. deals with the procedural aspect of maintenance proceedings under section 125 Cr.P.C. It is specified that proceedings under section 125 Cr.P.C. may be taken against any person in any district where any person resides or where he last resided with his wife or where the wife resides. The term 'resides' has a wide connotation and cannot be interpreted to mean only the domicile or permanent residence, but, contemplates something more than a casual stay or visit. The term 'resides' has been defined in the Oxford dictionary '*as to dwell permanently or for a considerable time; to have one's settled or usual abode; to live in or at a particular place*'. The Supreme Court in ***Darshan Kumari Versus Surinder Kumar 1995 (4) Supreme Court Cases 137*** held "*we find that Section 126 of the Code requires that the proceedings under section 125 may be taken against any person in any district where he or his wife resides. The section does not require permanent residents at the said place. Even a temporary residence, so long as it is not casual, is sufficient to confer jurisdiction on the Magistrate at that place or of the district concerned.*"

8. In ***Vijay Kumar Prashad Versus State of Bihar and Others (2004) 5 Supreme Court Cases 196***, it was also held that Section 126 has enlarged the venue of proceedings for maintenance so as to include the place where the wife may be residing on the date of the application, as against Section 488 of the old Criminal Procedure Code. This change was introduced by the Law Commission on taking note of the fact that often deserted wives are compelled to live with their relatives at a distance from the place where the husband and the wife last resided together. In ***Nihar Ranjan Dash Vs Sunita Sarangi 2017 (3) RCR (Criminal) 506***, the High

Court at Orissa, while referring to several judgments, has held that the place, where the wife resides on the date of filing of application, would have territorial jurisdiction.

9. Respondent No. 1 preferred an application before Turkpur, Tehsil Kharkhoda District Sonapat. Documents have been placed on the record to show that the father of the respondent owned agricultural land in the said area, along with the Adhaar Card of Vernika, the minor daughter, showing her residence to be at Turkpur, Tehsil Kharkhoda, District Sonapat. Reliance is also sought to be placed upon the school receipts issued by Manodev International School situated on Delhi Road Kharkhoda District Sonapat in the name of minor child Vernika. This Aadhar Card has been issued recently in the year 2017 whereas the school receipts are also very recent and pertain to the months of May & June, 2017.

10. The petitioner had specifically taken a stand that the courts at Sonapat would not have the jurisdiction to entertain the matter, which contention was not taken into consideration while deciding the interim maintenance. There are documents on the record which reflect that the respondent-claimant is residing at Bhadurgarh as would be evident from the Aadhar card, name reflected on the electoral roll of both the respondents and her mother for the year 2014, whereas there are documents also available showing her father had ancestral land at Turkpur Tehsil Kharkhoda District Sonapat. No reliance can be given to any document of the year 2017 as they are subsequent to the filing of the maintenance application.

11. In this background, the criminal revision petition is allowed and the case is remanded back to the District Judge, Family Court, Sonapat

to decide the question of maintainability of the petition. As far as the question of interim maintenance is concerned, there is nothing on the record to show that the respondent-wife is earning or capable of sustaining herself or minor daughter. It is a matter for evidence, therefore, the question of quantum of interim maintenance does not warrant interference.

12. Since this matter has remained pending in the High Court for one reason or another and to explore the possibility of an amicable settlement, the District Judge is directed to decide the question of Territorial Jurisdiction within a period of three months on receipt of certified copy of this order and the main case thereafter preferably within a period of six months.

13. Disposed of accordingly.

02.04.2018

Waseem Ansari

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No