

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

CRR(F)-192-2014(O&M)

Date of decision:-24.7.2018

Dushant Mangla

...Petitioner

Versus

Smt.Geeta Rani and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.S.K Garg Narwana, Senior Advocate with
Mr.Vishal Garg Narwana, Advocate
for the petitioner.

Mr.Sanjay Vashishth, Advocate
for the respondents.

H.S. MADAAN, J.

This revision petition is directed against judgment dated 25.8.2014 passed by learned District Judge, Family Court, Faridabad vide which petition under Section 125 Cr.P.C. filed by Geeta Rani – wife, Ms.Arushi – daughter and Master Pulkit – minor son of Dushyant Mangla has been accepted and maintenance of Rs.25,000/- granted to them from the date of filing of petition.

The respondent, who is petitioner before this Court prays that the petition be accepted, the impugned order be set aside and application be dismissed.

Briefly stated, facts of the case are that Geeta Rani – wife, Ms. Arushi aged about 18 years – daughter, Master Pulkit aged about 13 years (at the time of filing of the petition i.e. on 16.9.2010) of Dushyant Mangla filed the petition against the latter claiming monthly maintenance allowance.

Inter alia, in the petition it is contended that petitioner Geeta Rani was married with Dushyant Mangla on 10.2.1990 at Fatehpur Billoch, Tehsil Ballabgarh, District Faridabad; that at the time of her marriage, her parents had spent sufficient dowry; that after the marriage, the spouses started residing together and were blessed with two children i.e. a daughter, namely, Arushi and a son, namely, Pulkit; that at the time filing of the petition, said Arushi was doing C.A., whereas Pulkit was studying in 8th class. According to the petitioner No.1, soon after marriage, the respondent and his family members started harassing and torturing petitioner No.1 since they were not satisfied with the dowry articles given by parents of petitioner No.1; that mother of respondent used to taunt petitioner No.1 that her parents had insulted them in the society by not giving sufficient dowry as per their expectations; that petitioner No.1 was beaten up by the respondent and his sister in connection with demand of dowry in the form of Rs.2 lakhs; that father of the respondent and his two brothers were doing the business of cloth merchant and the respondent was helping them in the abovesaid business; that petitioner No.1 used to do all the household work; that she was not provided proper meals even; that when she was in the advanced stage of pregnancy, she was turned out of the matrimonial home after giving

beatings in the year 1992; that the petitioner No.1 came to her parental house at Faridabad; that the respondent and his family members were demanding Rs.2 lakhs so that the respondent could start the business; that the family members of petitioner No.1 expressed their inability to fulfill that demand; that a compromise was reached between parents of petitioner No.1 and the respondent under which the respondent agreed to shift to Faridabad in the year 1993 and started the business of building material, which was financed by the parents of petitioner No.1; that the parents of petitioner No.1 paid a loan of Rs.1 lakh to respondent to start the business; that the respondent suffered loss in the business; that then he started a new business along with his brother-in-law namely, Braham Parkash under the name and style of Mangla Trading Company; that he used to sell items of hardware such as steel mesh and pipes; that the respondent used to stay with petitioner in the parental house, where they lived till 2006; that in the year 2006, parents of the petitioner No.1 purchased two plots bearing No.419/1 and 420/1 measuring 25 Sq. yards each situated at Shashtri Colony, Old Faridabad in the name of petitioner No.1; that after some renovation, the parties shifted in the house, however, there was no change in the behaviour of the respondent; that he used to harass and maltreat the petitioner No.1; that finally in June, 2006 the respondent threatened petitioner No.1 that until and unless his demand of Rs.2 lakhs was fulfilled, the petitioner No.1 would not be allowed to reside in the matrimonial home; that petitioner No.1 along with the minor children was turned out of the matrimonial house in July, 2006 and since then she is residing with her parents; that parents of petitioner No.1 have

already expired and her brother and sister are bearing the expenses of education of the children, which is in the range of Rs.12,000/- per month; that respondent is an able bodied person doing business under the name and style of M/s Mangla Trading Company earning Rs.30,000/- per month; that he is an income tax payee, therefore maintenance at the rate of Rs.10,000/- for petitioner No.1, Rs.8,000/- for petitioner No.2 and Rs.4,000/- for petitioner No.3 be allowed.

On notice, the respondent had appeared and filed written reply contesting the petition taking various legal objections including challenging *locus standi* of the petitioners to file the petition stating that no cause of action had arisen to them to file the petition; that respondent never refused or neglected to maintain the petitioners. According to the respondent, the petitioner No.1 was never ready to live with the respondent; that the respondent had filed a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights but the petitioner No.1 was not prepared to join his company; that the petitioner No.1 is a hot tempered woman and she used to talk with respondent in filthy language; that her behaviour was rude and cruel. According to the respondent, the marriage between petitioner No.1 and him was a simple affair and no dowry was given or accepted; that petitioner No.1 was given due love and respect by him and his family. The allegations of harassment and humiliation at the hands of respondent and his family members are denied. It is contended that no demand of dowry was ever raised. The respondent further contended that petitioner No.1 refused to cook food for the respondent or to do any other household work; that she had left the

matrimonial home without any reason taking all the ornaments and valuable clothes; that under pressure of petitioner No.1, respondent started living with the parents of petitioner No.1 at Faridabad but he never accepted any financial help from her parents. In the end, the respondent prayed for dismissal of the petition.

During the course of evidence of the petitioner, petitioner No.1 and petitioner No.2 got themselves examined as PW1 and PW2 tendering their affidavits Ex.PW1/A and Ex.PW2/A, respectively and documents Ex.P1 to Ex.P14 and Mark A to Mark-G.

Whereas in rebuttal, the respondent got his statement recorded as RW1 in addition to examining Dal Chand as RW2. They have tendered in evidence their affidavits Ex.RW1/A and Ex.RW2/A, respectively and documents Mark A to Mark F.

After hearing arguments, learned Court below had allowed the petition and granted monthly maintenance allowance as mentioned above.

Para No.13 of the judgment is quite relevant and is reproduced as under:

13. The parties were got married on 10.2.1990. The petitioner No.2 is 21 years of age and petitioner No.3 is about 16 years of age. Both the children are studying. The parties have been living separately since 2007. It has come in the testimony of the petitioner that she was subjected to mental and physical cruelty by the respondent and that he refused to maintain the petitioners without any reasonable

cause. The petitioners have placed on record the receipts Ex.P1 to Ex.P3, photocopy of the cheque Ex.P4, receipt Ex.P5, payments made by cheque Ex.P6 to Ex.P9. Ex.P10 to Ex.P14 are other documents regarding education of the children and their expenses. Mark A to Mark G are the receipts regarding expenses incurred on the education of the children.

Similarly concluding para No.15 being crucial is reproduced as under:

15. It is the case of the petitioners that petitioner No.1 has no source of income. The witness of the petitioner namely Arushi (PW2) stated in her cross-examination that her mother was earning amount Rs.20-25,000/- per month as rental income. There is an affidavit of the petitioner on record that she had no rental income from any source nor any property in Faridabad or in India. On the other hand, the respondent is running a Hardware shop. He admitted this fact in his cross-examination. He also admitted the fact that he was an income tax payee. The respondent has not disclosed his income from his business. In the affidavit, at one place, he mentioned that his income was Rs.12,000/- per month. He denied this version and stated that he was earning Rs.5,000/- per month. At another point in the same cross-examination, he stated that he was earning Rs.6500/- per month. From this testimony, it is very clear that the

respondent is telling a lie regarding his income, therefore, he is disbelieved on the point of his income. He admitted in his cross-examination that he is an income tax payee. He is running business in Faridabad. He must be earning more than Rs.30,000/- per month. The children are grown up and the petitioner No.1 is incurring huge expenses on their education etc. It has come in the cross-examination of the witness of petitioners that petitioner No.1 is having rental income of Rs.20-25,000/- per month. The petitioner No.1 has tendered an affidavit that she had no property whatsoever to derive any rental income. Even if it is assumed that the petitioner has some rental income as deposed by her daughter, it cannot be said to be sufficient now-a-days for the entire family. Being a husband and father, it is the responsibility of the respondent to maintain the petitioners. Hence, maintenance of Rs.15,000/- per month to petitioner No.1, Rs.5,000/- per month to petitioner No.2 and Rs.5,000/- per month to petitioner No.3 is granted from the date of the petition.

This order left the petitioner aggrieved and he has filed the present petition, notice of which has been issued to respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the respondent (herein revisionist) has contended that petitioner No.2 (herein respondent No.2) has attained majority inasmuch as when petition was filed on 16.9.2010, she was aged about 18 years and now after eight years, she is aged about 26 years and has got married, therefore, she is not entitled to maintenance. As regards respondent No.3 Master Pulkit, who aged about 13 years on 16.9.2010, as such presently 21 years. He having attained majority is also not entitled to get maintenance.

On the other hand, learned counsel for the petitioners (herein respondents) has contended that petitioner No.2 being a female is entitled to get maintenance till her marriage though she has attained majority. As regards, petitioner No.3 (herein respondent No.3), it is contended that he was minor at the time of filing of the petition, therefore petition at his instance was maintainable.

During the course of arguments, it has come up that petitioner No.2 (herein respondent No.2) has got married whereas petitioner No.3 (herein respondent No.3) is now 20 years old staying with his mother. Section 125 Cr.P.C. provides that 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 .

The Court below after recording evidence of both the parties has come to the conclusion that petitioner No.1 is not having any source of income and is not possessed of any property sufficient for her maintenance. Though petitioner No.2 – Arushi is stated to have said in her cross-examination that her mother was earning Rs.20-25,000/- as rental income but then there is affidavit on oath of petitioner No.1 that she had no rental income from any source or property in Faridabad or in India. The respondent has not brought any evidence to show that petitioner No.1 is possessed of any immovable property which she might have given on rent and petitioner No.1 is getting Rs.20-25,000/- per month as rental income. Therefore, in absence of specific pleadings by the respondent and leading of evidence in that regard, any such admission made by PW2 Arushi in her cross-examination does not demolish the case of petitioner No.1 for grant of maintenance. Petitioner No.1 was rightly awarded a sum of Rs.15,000/- per month as maintenance, keeping in view the economic status of the parties, , trend of rising prices, earning of the respondent and basic requirements of food, clothing, health etc.

Of course after marriage, petitioner No.2 (herein respondent No.2) is not entitled to get maintenance, whereas after attaining majority petitioner No.3 (herein respondent No.3) is also not entitled to get any maintenance. Learned trial Court has observed that respondent is running a hardware shop as admitted by him in his cross-examination. He had further stated that he was an income tax payee. He has not said even a word about his income from his business. In the affidavit, he has

mentioned his income as Rs.12,000/- per month. The respondent is stated to be running business in Faridabad. His earning capacity has been found to be more than Rs.30,000/- per month. Petitioner No.1 – Geeta Rani, who was having custody of both the children and has been bringing them up is entitled to get Rs.15,000/- per month, whereas petitioner No.2 is entitled to get maintenance till her marriage and petitioner No.3 till he attains majority and not beyond that.

Therefore, the judgment passed by District Judge, Family Court, Faridabad is modified observing that Ms.Arushi – petitioner No.2(herein respondent No.2) is not entitled to get maintenance from her father, the respondent (herein revisionist) from the date she got married, whereas petitioner No.3 – Master Pulkit (herein respondent No.3) is not entitled to get maintenance from the date he attained majority. However, the judgment is kept intact as regards grant of maintenance to petitioner No.1 – Geeta Rani (herein respondent No.1) @ Rs.15,000/- per month.

With the above modification, the revision petition is disposed of accordingly.

24.7.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No