

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

CRR(F)-84-2014

Date of decision:-8.10.2018

Smt.Imlesh and another

...Petitioners

Versus

Amit

...Respondent

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

Present: Mr.Ravi Malik, Advocate
for the petitioners.

Mr.K.B. Raheja, Advocate
for the respondent.

H.S. MADAAN, J.

Petitioner Imlesh, estranged wife for herself and for petitioner Kumari Vanshika minor daughter of the parties, who is in her custody had filed a petition under Section 125 Cr.P.C. for grant of maintenance allowance against her husband Amit – respondent, contending that on account of her maltreatment, harassment, misbehave besides torture in connection with demand of dowry at the hands of her husband Amit, she is residing separately along with minor daughter of the parties; that on 21.10.2009, the respondent had set her on fire even, resultantly, she had suffered 30% burn injuries and was hospitalized and since November

2009, she is residing at her parental house; that she does not have any source of income and is dependent upon her parents, whereas the respondent is running a milk dairy also having rental income, in addition to that he is supplying purified water and his total earning is Rs.50,000/- per month and despite that he has neglected and refused to maintain the petitioners.

On notice, the respondent appeared and filed written reply refuting the allegations in the petition contending that he is working as a car driver earning Rs.4,000/- per month, whereas the petitioner No.1 is working in a beauty parlour earning handsome amount. The allegations levelled by the petitioner No.1 regarding her harassment and maltreatment in connection with demand of dowry, the respondent having set her on fire with the help of his parents are strongly refuted. In the end, he prayed for dismissal of the petition.

The parties were afforded adequate opportunities to lead evidence in support of their respective claims.

After hearing arguments, the trial Court of District Judge, Family Court, Faridabad vide order dated 24.10.2013 rejected the claim of petitioner No.1 for maintenance observing that she is residing with her parents without any justifiable cause and allegations of her maltreatment, harassment at the hands of respondent and his family members and having tried to kill her by setting her ablaze on 21.10.2009 were not proved, leading to the inference that she was residing at her parental house of her own, as such not entitled to maintenance under Section 125(4) Cr.P.C., whereas with regard to minor daughter of the parties residing with the

petitioner No.1, she was granted maintenance @1,000/- per month from the date of filing of the petition till she attains age of majority.

This order left the petitioners aggrieved and they have filed the present petition praying that the same be accepted, the impugned judgment be set aside, petition under Section 125 Cr.P.C. be allowed and maintenance at the rate claimed in the petition be awarded.

Notice of the revision petition was given to respondent, who put in appearance through counsel.

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

As far as petitioner No.1 Imlesh is concerned, the trial Court by giving proper reasoning in light of the facts and circumstances of the case and evidence available on the file has concluded that she is residing with her parents of her own will without any justifiable reason, as such in terms of Section 125(4) Cr.P.C., she is not entitled to claim any maintenance. I do not see any reason to disagree with the trial Court on that point.

Learned counsel for the respondent has further submitted that Imlesh had lodged FIR No.322 dated 22.10.2009 against the respondent and his parents for the offences under Sections 498-A, 406 and 307/34 IPC with Police Station Surajkund, Faridabad. However, vide judgment dated 10.2.2012, they were acquitted of the charge framed against them. The complainant did file an application seeking leave to file an appeal against that judgment, however, that application bearing CRM-A-317-MA-2012 was dismissed by a Division Bench of this Court vide order

dated 20.2.2013. thus, the allegations of cruelty, harassment and attempt to murder by her husband and his parents by setting her ablaze were not established.

Furthermore, learned counsel for the respondent has submitted that the present respondent Amit had filed a petition for divorce against the present revisionist Imlesh on the ground of cruelty, whereas Imlesh had filed a petition under Section 9 of the Hindu Marriage Act against Amit for restitution of conjugal rights. The petition under Section 13 of the Hindu Marriage Act was accepted, whereas one under Section 9 of the Act was dismissed. The petitioner Imlesh had approached this Court feeling aggrieved by the two judgments. However, FAO No.6146-2013(O&M) so filed by her was dismissed vide order dated 4.2.2014 by a Division Bench of this Court. Copies of the two judgments have been placed on record.

It being so, the impugned judgment to the extent of declining the maintenance to petitioner Imlesh is found to be correct and proper and is upheld.

Now the question arises as to whether the monthly maintenance allowance granted to minor daughter of the parties, who is residing with her mother i.e. petitioner Imlesh was done so properly if so whether such allowance is adequate or not, the answer to the first point has to be in positive and the latter point is negative. An able bodied person is liable to maintain his minor daughter who is unable to maintain herself, even though he may be a professional beggar. In this case respondent-father, as per his own admission, is working as a driver, who is supposed

to earn an adequate amount and his liability to maintain his minor daughter is certainly there. The respondent has pleaded that he is working as a driver and earning Rs.4,000/- per month, whereas according to petitioners, he is running a dairy farm and also supplies purified water and has got his own transport business besides getting rental income and he manages to earn Rs.50,000/- per month. But these assertions by petitioners have not been established on record by leading enough cogent and convincing evidence. Nevertheless the respondent is an able bodied and middle aged person. According to him, he is working as a driver earning Rs.4,000/- per month. A driver earning Rs.4,000/- per month does not appear to be convincing and plausible when now-a-days even manual labour can certainly earn Rs.400 to Rs.500/- per day, therefore, the monthly income of respondent can be taken to be in the range of Rs.15,000/- to Rs.20,000/- per month.

A child is entitled to get education and bringing up as per social and economic status of his parents. Of course, she is entitled to get good education and up-bringing. A growing child needs special diet. The expenses also need to be borne on account of health care, clothing, travelling, school fee, books, stationary, transportation charges for going to school.

The amount of Rs.1,000/- per month awarded to petitioner No.2 Kumari Vanshika is quite inadequate and on lesser side, which deserves to be enhanced and considering the facts and circumstances of the case, the needs of the growing child and probable income of respondent assessed, the monthly maintenance allowance granted at the

rate of Rs.1,000/- per month by the trial Court is enhanced to Rs.5,000/- per month payable to her from the date of filing of the petition onwards till the date she attains majority.

Therefore, the judgment passed by District Judge, Family Court, Faridabad is modified observing that minor daughter Kumari Vanshika is entitled to get maintenance Rs.5,000/- per month from the date of filing of the petition onwards till she attains majority.

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

8.10.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No