

CRR(F) No. 89 of 2014 (O&M)

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

CRR(F) No. 89 of 2014 (O&M)

Date of decision : 17.04.2018

Dinesh Nara

.....Petitioner(s)

Versus

Preety

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Pawan Kumar Mutneja, Advocate,
Mr. V.S. Mahal, Advocate and
Ms. Nikita Garg, Advocate
for the petitioner.

Mr. Mohd. Arshad, Advocate
for the respondent.

ANITA CHAUDHRY, J.

The petitioner has assailed the order dated 17.02.2014, passed by the Family Court, Sonipat, vide which the application filed under Section 125 Cr.P.C. had been allowed and maintenance of Rs.15,000/- per month was allowed to the wife besides litigation expenses.

There are some undisputed facts which may be noticed first. The parties were married on 23.11.2009. No issue was born to them. The wife made allegations that though her parents had given a lot of dowry

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and had spent a lot on the marriage but the husband was not satisfied and taunts were given and she was beaten up and there was a demand of a bigger car. Additionally an allegation was made against a relative of the husband who had outraged her modesty. The petitioner claimed that she was mentally depressed on account of the act and conduct of the husband and she was left at her parental home on 28.01.2010. It was pleaded that she again returned to the matrimonial home as an assurance was given but she was again turned out of the house on 29.07.2010. Three months later she lodged an FIR with the police. The wife had pleaded that she had done her MCA, B.Sc., B.Ed. and was pursuing her MSC at M.M. University, Mulana in District Ambala and had no source of livelihood to maintain herself and her parents were not in a position to maintain her. She had claimed that the husband was running a guest house and had monthly income of Rs.1,65,000/- and was an Agent with Religare Insurance Company and was earning Rs.30,000/- per month.

The husband took the plea that the wife was short tempered and quarrelsome and used to fight on small issues. He had pleaded that his father got a paralytic attack and 90% of his body was affected and he was unable to move or attend to his daily chores and his mother was old and she was unable to attend to him and he alone was looking after him. It was denied that he was running a guest house or that he had income from any other source. It was pleaded that the petitioner was highly educated and was working before marriage in Kendriya Vidyalaya as a

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PGT (Computer Teacher) and she had joined the school in 2007 and her income at that time was Rs.12,000/- per month and she worked with Kendriya Vidyalaya, Sonipat. It was pleaded that after marriage she deserted him and started working in Satyam Modern Public School, Sonipat and was getting salary of over Rs.18,000/- per month. It was pleaded that she was a Guest Teacher in a JBT School and was running her own Coaching Centre by the name of Preeti Coaching Centre. He annexed photos of the advertisement placed by her. It was pleaded that the wife was highly educated and owned agricultural property. It was pleaded that the wife had lodged an FIR and therein she had alleged that she had been cheated as they were told that the husband was a Legal Advisor but he used to do nothing and remained at home whereas in this petition she had pleaded that the husband had income over Rs.2,00,000/- per month. It was denied that he was an Agent with Religare Insurance Company.

Both the sides were called upon to lead evidence.

The petitioner (wife) tendered her evidence. In the cross-examination, she admitted her educational qualifications but stated that she was working prior to her marriage and at that time she was getting a consolidated salary of Rs.12,000/- per month, which was up to December 2012. She stated that she was getting Rs.8,000/- per month from Satyam School but the school had not issued any certificate. She stated that she was preparing for her KVS Teaching Examination and had recently

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completed her M.Ed. She denied that she was running a coaching centre.

She also examined Ruchita, the sister-in-law of the husband who had fallen out with her husband.

On the other hand, the husband filed his affidavit and took the same pleas as were taken in the reply. He admitted that he was a Member of Bar Association at Gurgaon and was the Executive Member since 2012. He stated that he had no income from this position and his father was drawing pension of Rs.19,000/- per month. He denied that he had turned out the petitioner. He denied that he was running a guest house.

The Family Court, Sonipat noted the following in para 10 of the judgment:-

“Now coming to the quantum of maintenance. At the outset, it may be mentioned that the petitioner is a well qualified lady and she is presently employed and earning about Rs.14,000/- per month. However, her said employment is temporary. On the other hand, the respondent is admittedly, an advocate practising in the Courts at Gurgaon. He also has the agricultural land measuring about two Kanals. It is so far well settled that the wife is entitled to the same status of living and standard as that of her husband and his family. In the present case, the

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respondent is well placed in the society as well as in terms of earning from his profession and land. Though, the petitioner has tried to prove the sources of income of the respondent but understandably, she had her own limitations in finding out the sources of income of the respondent and about his properties. Therefore, the respondent himself was the best person to have come up with his sources of income and list of properties but he has not. The petitioner has produced on record the list of Executive Committee Members – 2012 of District Bar Association, Gurgaon and as per the same, the respondent is one of the Members. Therefore, keeping in view the totality of the facts and circumstances of the case and vocation of the respondent and his social and family background, in my considered opinion, the respondent must be earning approximately Rs.50,000/- per month from all sources. Out of this, keeping in view the fact that the petitioner is also presently employed, in my considered opinion, a sum of Rs.15,000/- per month would be just and reasonable amount that may be awarded to the petitioner as maintenance with effect from the date of the filing of the present petition, i.e. 4.2.2011, besides litigation expenses of Rs.2200/-, and I order accordingly.”

I have heard counsel of both the sides.

The submission on behalf of the petitioner is that the respondent had concealed from the Court that she was earning and when she was confronted with documents, the respondent admitted to some facts while she denied the rest of them and the Family Court had noted that she was getting income of Rs.14,000/- per month but still allowed maintenance and the amount was sufficient for her and no evidence or proof was filed to prove his income and merely because petitioner was the Executive Member of the Bar Association, the Court could not have assumed that he had a reasonably good background and that his income would not be less than Rs.50,000/- per month. The counsel contended that the petitioner had a plot of two Kanals in Jhajjar and there was no income from that property. It was urged that the petitioner had filed an affidavit called for by this Court and he has given the affidavit that he did not have taxable income, therefore, he was not filing any income tax return. The counsel further submits that the respondent is highly qualified and is a post graduate and she had not disclosed her income and had pleaded a wrong fact that she was unable to maintain herself.

On the other hand, the submission is that the petitioner is a lawyer and has a good practice and is Member of the Executive of the Bar Association, Gurgaon and has landed property and income from agricultural land and it is difficult for them to collect his income and the wife is entitled to the same status as the husband.

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A perusal of the record shows that an FIR had been lodged by the respondent. The copy of the judgment is also available on record. The allegations made in the FIR were the complainant and her family had been cheated as they were told that the accused (husband) was a Legal Advisor with a company and had income of Rs.30,000/- per month, which were found to be untrue. There were allegations of demand of dowry and husband's association with some woman. The trial had ended in acquittal in July 2016.

The issue that falls for determination is whether the respondent was entitled to any maintenance when she had concealed her income and whether she had sufficient income to maintain herself.

Ample evidence had been led on the record by the husband to show that the petitioner (wife) had been teaching since 2012. The respondent is highly qualified and has a degree in B.Sc., M.Sc., B.Ed., M.Ed. and MCA. The attendance record and the salary certificates show that at the time of institution of the petition, she was teaching in Satyam Modern Senior Secondary School and thereafter, in Satyam College of Education. She had also qualified her S.T.E.T. and C.T.E.T. The petitioner did not disclose in her application that she had been working. She had specifically pleaded that she had no source of income and was totally dependent on her parents. Similar assertion was made by her in her affidavit filed along with the application for interim maintenance and in the affidavit Ex.PW1/A, at the time of evidence. In the cross-examination, when she was

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confronted and asked direct questions on her engagement in different schools. She admitted that she was getting salary from Satyam School but stated that it was Rs.8,000/- per month. She feigned ignorance about the property owned by her in her native village She failed to disclose that at that point of time she was working with Satyam College of Education. It is the respondent who brought evidence and her *Curriculum Vitae*. Her attendance record and the pay register show that she was getting salary of Rs.18,000/- per month in January 2013.

The trial Court did notice that the wife was well qualified and was working and also noticed her income but added that it was a temporary employment and as the husband was a lawyer, his monthly income would be approximately Rs.50,000/- from all the sources and awarded Rs.15,000/- per month as maintenance. The wife had failed to lead any evidence to show the income and the trial Court had assumed the income of the husband on pure guess work. The wife had got a case registered against the husband and his family on the ground that they had been cheated and wrong fact had been disclosed to them before marriage that the husband was earning well and it was false. The wife had taken the different stand in the petition filed under Section 125 Cr.P.C. pleading that the husband was earning handsome amount from his profession and from his property. No evidence could be led to show that the husband was getting any income from his plot/guest house. It is not even known whether the property is built up or is lying vacant.

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From the above, it is clear that the respondent did not lead evidence to establish that he had income which was high or that their (husband) status was higher than what she was enjoying. The respondent failed to disclose her income and it was concealment on her part. She is highly educated and was working and had sufficient income to maintain herself. The Family Court had gone wrong in awarding maintenance. The revision is allowed and order of the Court below is set aside.

Before parting, it is necessary to notice that notice of motion was ordered subject to payment of Rs.25,000/-, which was to be paid to the respondent. While going through the record, I find that a draft was handed over on 02.08.2014, which later on was returned to the petitioner to get it re-validated. The old draft was to be handed over to the petitioner and he was to get a new one prepared which was not done immediately and was delayed. It was also ordered that a fresh draft would be deposited with the Registry and this order was made in November 2015. The petitioner did not take steps on his own. When the new draft was deposited, the respondent side raised objection that the name was not correctly given and the draft was returned to the petitioner. The petitioner was directed to additionally pay Rs.45,000/- over and above Rs.25,000/-, which had been ordered earlier. These two amounts would have to be paid within a month to the respondent if not already paid.

17.04.2018

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(ANITA CHAUDHRY)
JUDGE

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No