IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR(F) No. 111 of 2015 (O&M)
DATE OF DECISION :- August 08, 2018

Sushma Rani @ Neena and others **...Petitioners**

Versus

Suresh Kumar **...Respondent**

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

Present:- Mr. Gaurav Singla, Advocate for the petitioners.

Mr. K.L. Dhingra, Advocate for the respondent.

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Sushma Rani @ Neena, aged about 39 years, daughter of Jai Kishan, who is wife, Shubham Sharma, aged about 13 years and Rohit Sharma, aged about 6 years minor sons of Suresh Kumar Sharma-respondent had filed a petition under Section 125 Cr.P.C. for grant of monthly maintenance allowance by the latter contending that they are not having any source of income and are unable to maintain themselves, whereas respondent having sufficient means has neglected and refused to maintain them. After contest the petition was allowed by District Judge, Family Court, Ambala vide order dated 3.3.2015 granting monthly maintenance allowance at the rate of Rs.4000/- per month to petitioner no. 1 Sushma Rani @ Neena and Rs.2000/- per month each to minor petitioners Shubham Sharma and Ruhil payable, by the respondent from the date of passing of the order. The petitioners were also held entitled to recover arrears of interim maintenance awarded to them during pendency of petiton besides Rs.7500/- as litigation expenses. The petitioner felt aggrieved by the said order with regard to quantum of maintenance awarded to them and they are seeking modification of the order by way of filing the present Criminal Revision petition, notice of which was given to the respondent, who put in appearance.

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

Learned counsel for the petitioners has contended that the maintenance awarded is on very lower side keeping in view the fact that even things of the basic needs have been very costly and further presently petitioner Shubham Sharma is pursuing B.Tech. degree whereas Ruhil Sharma is a student of 8th Class and considerable amount is required for their education and the amount awarded as maintenance to the petitioners is quite meager therefore they are unable to meet their needs. It is further contended that the respondents is a practicing lawyer at Kurukshetra; he is an Income Tax payee and working as Notary Public also; he belongs to a rich family, therefore, the monthly maintenance allowance be enhanced.

Whereas learned counsel for the respondent states that the respondent is making both ends meet with difficulty and he is a man of modest means and is even unable to pay the maintenance allowance which has been granted by the Court below.

After hearing the rival contentions, I find that the Court below has obviously granted the maintenance allowance to the petitioners at lesser rate than what was warranted by the facts and circumstances of the case. Here a reference to paras no. 15 to 19 of the order passed by the trial Court is necessary to reproduce :-

"15. As far as quantum of maintenance is concerned, the petitioners have pleaded that the income of the respondent to be Rs.1,00,000/- per month as he was a practicing lawyer at Kurukshetra and was also doing attestation work being Notary Public. As against this in his affidavit Ex.RW1/A the respondent pleaded in his income to be Rs.10,000/- to Rs.15,000/- per month. He was income tax payee having PAN card. In his cross-examination, he admitted that he was a practicing lawyer in District Courts, Kurukshetra since the year 1995. He as also Notary Public Since November, 2006. He was residing with his parents in their home. He was also running a typing shop, although later on stated that his father was running said typing shop. His father was also a stamp vendor and also income tax assessee. He stated that in his income tax return for the assessment year 2013-2014, he had shown his annual income as Rs.1,46,254/-. He was maintaining notary register. He was also earning Rs.5,000/- to Rs.6,000/- per month from Notary work.

16. In order to prove the exact income of the respondent, the petitioners have examined Shweta Gupta, Tax Assistant, Income Tax Officer, Kurukshetra. She produced Income Tax Returns pertaining to the respondent as Ex.PW2/1 and Ex.PW2/2 and the Income Tax Returns pertaining to Loku Ram i.e. Father of the respondent Ex.PW2/3 and Ex.PW2/4.

17. Perusal of Income Tax Return of the respondent for the assessment year 2013-2014 the annual income of the respondent was shown to be Rs.2,68,915/- and as per the Income Tax Return of Loku Ram father of the respondent for the assessment year 2013-2014 his annual income was shown to be Rs.3,42,057/-.

18. The respondent has not been able to produce any rebuttal to the said documents. From the income of Loku Ram who is father of the respondent, it cannot be said that parents of the

respondent were also dependent upon the income of the respondent. From the cogent and convincing documentary evidence, the income of the respondent can be taken as Rs.22,500/- per month. However, the respondent has not been able to produce any document with regard to the fact that the petitioner no. 1 was earning. Accordingly, taking into account the income of the respondent coupled with the need of the petitioners, he is directed to pay a sum of Rs.8,000/- per month to the petitioners from the date of passing of this order i.e. Rs.4,000/- per month to the petitioner No. 1 and Rs.2,000/- per month each to the petitioners no. 2 and 3 and I order accordingly.

19. In view of my above discussion, instant petition is allowed with no order as to costs and petitioners are held entitled to maintenance from the respondent to the tune of Rs.8,000/- per month i.e. Rs.4,000/- per month to the petitioner no. 1 and Rs.2,000/- per month each to the petitioners no. 2 and 3 form the date of passing of this order. The petitioners are also held entitled to recover the arrears of amount of interim maintenance awarded to them during the pendency of petition under Section 125 Cr.P.C. Petitioners are also held entitled to litigation expenses at the rate of Rs.7500/-. Memo of costs be prepared. File be consigned to the record room after due compliance."

The trial Court has taken note of the fact that respondent is a practicing lawyer at Kurukshetra in addition to doing attestation work being Notary Public. Though respondent has pleaded his income to be Rs.10,000/- to Rs.15,000/- per month but that cannot be accepted keeping in view the fact that he is an Income Tax payee having PAN Card and as admitted by him in his cross examination he has been a practicing lawyer in District Courts, Kurukshetra since the year 1995 and working as Notary Public since the year 2006. Further, he has been residing with his parents in a home and has been running a typing shop. Though later on he had stated that typing shop belongs to his father. It has come on record that father of respondent is a Stamp Vendor and is an Income Tax assessee. The respondent has admitted maintaining Notary Register and earning Rs.5,000/- to Rs.6000/- per month. On perusal of the Income Tax return of the respondent it comes out that for the year 2013-2014 his income was Rs.2,68,915/- whereas his father had shown income of Rs.3,42,057/- for the year 2013-2014. Though income of father of respondent cannot be added to income of respondent but that does go to show the financial capacity of the respondent and his family. Thus, the total income of respondent was taken by the trial Court as Rs.22,500/- per month which is on lower side. That could safely be taken to be around Rs.40,000/- per month. The monthly maintenance allowance granted to the petitioners is to be fixed keeping in view the financial capacity and social status of the respondent. Their needs are to be assessed accordingly. The petitioners deserve to be granted monthly maintenance allowance of Rs.8,000/- per month for petitioner no. 1 and Rs.4,000/- each for petitioners. no. 2 and 3. The amount of maintenance awarded by the trial Court stands enhanced accordingly by way of modification in the interim order.

In that way the Revision Petition is accepted.

(H.S. MADAAN)
JUDGE

August 08, 2018
p.singh

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No

PARVINDER SINGH
2018.08.10 14:29
I attest to the accuracy and integrity of this document
Chandigarh