

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

CRR(F)-158-2015(O&M)

Date of decision:-18.7.2018

Gianeshwar Parveen

...Petitioner

Versus

Smt.Poonam

...Respondent

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

Present: Mr.M.S. Saini, Advocate
for the petitioner.

Mr.Vikas Kumar, Advocate
for the respondent.

H.S. MADAAN, J.

Petitioner Gianeshwar Parveen has filed the instant revision petition praying that judgment dated 25.8.2014 passed by District Judge, Family Court, Faridabad allowing petition under Section 125 Cr.P.C. filed by his wife Poonam – petitioner against him and awarding maintenance @ Rs.15,000/- per month be set aside.

Briefly stated, facts of the case are that petitioner Poonam (herein – respondent) had filed a petition under Section 125 Cr.P.C. against her husband Gianeshwar Parveen – respondent (herein – petitioner) on the averments that marriage between the parties was

solemnized as per Hindu rites and ceremonies on 23.11.2008 and at that time sufficient dowry articles were given to petitioner by her parents but her husband, the respondent and his family members were not satisfied and they demanded more dowry articles; that the petitioner was turned out of the matrimonial home in February, 2010 and she had to fall back upon her parents; that she got FIR No.261 dated 10.5.2010 for the offences under Sections 498-A/323/328/406/34 IPC registered with Police Station Sector-7, Faridabad against her husband and his family members. According to the petitioner, she is not possessed of sufficient means and has no source of income to meet her requirements and she is dependent upon her parents. On the other hand, the respondent is a skillful Engineer having source of income as follows:

- (i) He is running a paying guest House in H.No.D-155, Sector-55, Noida having income of Rs.70,000/- per month.
- (ii) The respondent is having his own House bearing No.1688, Parvatiya Colony, Faridabad getting rental income of Rs.9,000/- per month.
- (iii) The respondent was allotted a shop bearing No.C-21 at Pushp Mandi, Sector-88, Noida and where he is running business of flowers and earning Rs.50,000/- per month.
- (iv) The respondent is having an ancestral house situated at Palwal City, District Palwal and was having rental income of Rs.8,000/- per month.

(v) The respondent was running a business of property dealer in the name and style of Khushi Real Estate Agency in Sector-20, Noida and was earning Rs.50,000/- per month.

In that way, the total income of respondent is Rs.1,87,000/- per month around. She further pleaded that she is a graduate and has done B.Ed. The petitioner claimed maintenance @ Rs.40,000/- per month.

On notice, the respondent appeared and filed written reply contesting the petition taking various legal objections challenging the maintainability of the petition and arising of any cause of action in favour of the petitioner to bring the petition. On merits, the respondent admitted relationship of husband and wife between the parties, though stating that marriage between them was a simple affair and no dowry was given or accepted. He denied that he or his family members ever maltreated the petitioner or raised demand of any dowry from her. As regards the FIR lodged by petitioner against him and his family members, the respondent submitted that the petitioner did so on false allegations. The respondent had filed a petition under Section 10 of the Hindu Marriage Act against the petitioner, though as a result of compromise between the parties, the petition was withdrawn. The respondent denied that the petitioner was turned out of the matrimonial home, rather according to him, the petitioner left the house of her own without any reasonable cause. According to respondent, the petitioner is an educated woman, who has been doing tuition work earning handsome amount. The respondent further contended that the petitioner has been doing a teaching job in a

school near her house earning Rs.15,000/- per month, as such, she is in a position to maintain herself. Regarding his income, the respondent denied that he was earning Rs.1,87,000/- per month. Rather according to him, his income is Rs.4,000/- to Rs.5,000/- per month. He prayed for dismissal of the petition.

On an application for interim maintenance having been filed by the petitioner, she was granted interim maintenance @ Rs.5,000/- per month vide order dated 5.11.2011. During the course of her evidence, the petitioner got her statement recorded as PW1 and tendered her affidavit Ex.PW1/A. She further examined Shiv Ram as PW2, who submitted his affidavit Ex.PW2/A. Since the defence of respondent had been struck off vide order dated 8.11.2013, he was not allowed to cross-examine the witnesses of the petitioner or to lead evidence on his behalf.

After hearing arguments, the trial Court passed the impugned order. Para Nos.11 and 12 of the order are quite important and are being reproduced as under:

11. In support of her case, the petitioner examined two witnesses including her father. Petitioner (PW1) deposed that the petitioner got married with respondent on 23.11.2008 according to Hindu rites and ceremonies. Sufficient dowry was given at the time of marriage but the respondent and his family members were not satisfied and demanded more dowry. The petitioner got FIR bearing No.261 dated 10.5.2010 under Sections 498-A, 232, 328, 406, 34 IPC, Police Station Sector-7, Faridabad registered against the

respondent and his family members. The respondent turned the petitioner out of the matrimonial home in February, 2010 without any reasons. Since then she was residing with her parents. Respondent was running a Paying guest House in H.No.D-155, Sector-55, Noida and was having income of Rs.70,000/- per month. He was having his own House bearing No.1688, Parvatiya Colony, Faridabad and was having rental income of Rs.9,000/- per month. He was allotted a shop bearing No.C-21 at Pushp Mandi, Sector-88, Noida and was having business of flowers and was earning Rs.50,000/- per month. He was having an ancestral house situated at Palwal City, District Palwal and was having rental income of Rs.8,000/- per month. He was running a business of property dealer in the name and style of Khushi Real Estate Agency in Sector-20, Noida and was earning Rs.50,000/- per month. The total income of the respondent was Rs.1,87,000/- per month. Similar is the testimony of Sh.Shiv Ram (PW2).

12. The defence of the respondent was struck off. Therefore, he did not lead any evidence nor was he given a right to cross-examine the witness. It has come in the testimony of the both the witnesses that the petitioner was running a guest-house in House No.D-155, Sector-55, Noida and was having income of Rs.70,000/- per month. He was having a rental income of Rs.9,000/- per month from House

No.1688, Parvatiya Colony, Faridabad. He was running a business of flowers and a shop bearing No.C-21 at Pushp Mandi, Sector-88 Noida and earning Rs.50,000/- per month. He was having rental income of Rs.8,000/- from his ancestral house. He was running a business of property dealer and was having income of Rs.50,000/- per month. There is no document to corroborate the testimony of petitioner regarding income but it has to be kept in mind that the testimony of the petitioner is unrebutted. The respondent did not disclose his occupation in the written statement. He merely submitted that he was earning Rs.4,000/- to Rs.5,000/- per month, which was also not fixed as the income depended on customers. This clearly shows that the respondent was carrying on some kind of a business. Since the respondent has intentionally hidden his real income and occupation, it can be said that he has not come to the court with clean hands. He is carrying on a business. Therefore, his income cannot be less than Rs.45,000/- per month. In the facts and circumstances of the case, maintenance of Rs.15,000/- per month is fixed 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 respondent, who put in appearance through counsel.

I have heard learned counsel for the parties besides going

through the record.

At the very outset, it may be stated that the foremost prayer of learned counsel for the revisionist was that order striking of defence of respondent be set aside and he be given liberty to cross-examine the witnesses examined by the petitioner and to lead evidence in rebuttal.

Whereas, this request is being opposed by learned counsel for the respondent.

As it comes out from the record, the defence of respondent had been struck off vide order dated 8.11.2013 and he has not challenged that order till date and thereafter he joined the proceedings in the trial Court. The order passed by the trial Judge is based upon proper appraisal and appreciation of evidence and correct interpretation of law. The trial Judge has taken the income of the respondent to be Rs.45,000/- and then granted maintenance @ Rs.15,000/-. Sufficient reasoning has been given for taking monthly income of revisionist to be Rs.45,000/-. In this time of high prices when the cost of things of basic needs are getting prohibitive granting maintenance @ Rs.15,000/- cannot be said to be on excessive side.

Further, at this stage setting aside the impugned order and granting permission to the revisionist to cross-examine the witnesses examined by the petitioner and to lead evidence would set the clock back resulting in *de novo* trial. The trial Judge has already taken a very balanced view.

The law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an

illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse and not otherwise.

In the present case, I do not find any such illegality or infirmity with the impugned judgment much less apparent on the face of it. The judgment is certainly not in violation of settled principles of criminal jurisprudence. I do not see any reason to upset the impugned judgment.

Resultantly, the revision petition stands dismissed.

18.7.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No