IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

(1)

CRR(F) No.205 of 2015 (O&M)
Date of Decision: October 3, 2018

Seema and another

...Petitioners

Versus

Gourav Juneja

...Respondent

(2)

CRR(F) No.276 of 2015 (O&M)

Gourav Juneja

...Petitioner

Versus

Seema and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Akshay Jindal, Advocate
for the petitioners in CRR(F)-205-2015 and
for the respondents in CRR(F)-276-2015.

Mr. N.S. Shekhawat, Advocate
for the respondent in CRR(F)-205-2015 and
for the petitioner in CRR(F)-276-2015.

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JAISHREE THAKUR, J.

1. By this common order, this court shall decide above captioned two criminal revisions, which have been filed seeking to challenge the judgment dated 13.07.2015 passed by the District Judge, Family Court,

Hisar whereby, husband-Gourav Juneja has been made liable to pay maintenance @ ₹ 15,000/- per month to wife-Seema and @ ₹ 5000/- per month to minor daughter-Tani. In CRR(F)-205-2015, wife and the minor daughter are seeking enhancement in the maintenance amount whereas, in CRR(F)-276-2015, the husband is seeking reduction in the same.

2. In brief the facts of the case (*as taken from CRR(F)-205-2015*) are that a marriage of petitioner No.1-Seema was solemnized with respondent-Gourav Juneja on 18.02.2012 as per Hindu rites and ceremonies at Hisar. After marriage, both the parties resided together at Rohtak, Gurgaon and Hisar and out of this wedlock, petitioner No.2-Tani was born on 07.01.2013. On account of the fact that petitioner No.1 was harassed in connection with the demand of dowry, she was turned out of the matrimonial home. Since, she was not able to support herself, she filed a petition under Section 125 of Code of Criminal Procedure (for short 'the Cr.P.C.'), which was allowed by the impugned judgment dated 13.07.2015 allowing maintenance @ ₹ 15,000/- per month to petitioner No.1-wife and @ ₹ 5000/- per month to petitioner No.2 minor daughter, which judgment is under challenge in both the criminal revisions.

3. Learned counsel appearing on behalf of the petitioners-claimants submits that the respondent is an able bodied person and is working as Deputy Manager at Manesar Plant, Gurgaon and earning more than ₹ 1,65,000/- per month. Apart from that, he is also owner in possession of four residential houses in Gandhi Nagar, Rohtak and one another house in which the respondent with his family members is residing on the first floor and the ground floor has been rented out, as well as other movable and

immovable properties. It is also argued that besides having these immovable properties, he is also having various bank accounts, insurance policies, debit card and credit card, car etc. and living a luxurious life. It is contended that the amount of maintenance that has been assessed is wholly, in adequate.

4. Per contra, learned counsel appearing on behalf of the respondent-husband argues that petitioner No.1-wife was suffering from acute problem of Schizophrenia since 2006, which fact was concealed by her family members at the time of marriage. The marriage was a simple marriage and no dowry articles were given in the marriage or after the birth of the child. The allegations regarding demand of dowry and harassment are denied as being false. It is argued that the plea of being unable to support herself is patently false as in the petition under Section 9 of Hindu Marriage Act, she stated that she was employed as a Lecturer of Mathematics at GJU Hisar on a monthly salary of ₹ 12,000/- per month in the year 2008-2009 and thereafter, she worked at Chhaju Ram Jat College, Hisar as a Guest Teacher on contract basis. It is also contended that she also has a monthly income of around ₹ 52,000/- per month. Learned counsel for the respondent denied of getting a salary of ₹ 1,65,000/- per month or that he was owner in possession of any property as mentioned by the petitioners. It is stated that the respondent is getting ₹ 55,726/- per month as salary and that he has to pay three loans i.e. two from LIC and one from HDFC bank and apart from that, he has liability of old aged parents and unmarried sister. It is contended that after paying monthly rent and meeting all these liabilities, he has only ₹ 6950/- in hand from which he has to bear his personal expenses as well. In support of his arguments, learned

counsel relied upon judgments rendered in **Damanpreet Kaur vs. Indermeet Juneja and another, 2012(19) RCR (Criminal) 905** and **Mamta vs. Rajesh, 2001(1) RCR (Civil) 588.**

5. I have heard learned counsel for the parties, apart from perusing the record.

6. The learned District Judge, Family Court, after taking into consideration the arguments as raised, vide the impugned judgment, has assessed maintenance @ ₹ 15,000/- per month to petitioner No.1 and @ ₹ 5000/- per month to petitioner No.2, which has been assailed by both the parties. The only question that needs to be settled in both these criminal revisions is the quantum of maintenance that the petitioner No.1-wife and petitioner No.2-minor daughter would be entitled to receive from the respondent-husband. For settling this controversy, the income of the husband and his liabilities would have to be referred to.

7. Marriage between petitioner No.1-Seema and respondent-Gourav Juneja is not in dispute nor is it in dispute that the respondent is working as Deputy Manager in the Maruti Suzuki India Limited at Gurgaon. His salary slip for the month of August 2014 and September 2014 were placed on the record as Ex.P1 and Ex.P2 and to prove the said salary slips, Mr. Nitian Saraswat, Assistant Manager, stepped into the witness box as PW1 wherein, it was shown that the gross salary of the respondent was ₹ 1,04,456/- besides getting ₹ 15,000/- per annum as medical allowance and ₹ 36,800/- per annum against LTC. During the pendency of the present proceedings, Income Tax Return Acknowledgment of the respondent for the assessment year 2017-18 has been placed on record as Annexure A-1, where

the gross salary of the respondent has been reflected as ₹ 18,51,482/- and with deductions under Chapter VI-A of ₹ 1,50,000/-, his total income has been shown to be ₹ 17,01,480/-, on which tax has been assessed as ₹ 3,45,507/-.

8. During the pendency of the present proceedings, respondent has produced on record his salary certificate for the month of March, 2018 as Annexure P-8, as per which his gross emolument is ₹ 1,54,014.41, out of which a total deductions of ₹ 48,128.7 has been made and after these deductions, his net carry home salary comes to ₹ 1,05,885.70. So far as deductions are concerned, a sum of ₹ 27,930/- has been deducted towards income tax, ₹ 6456/- has been deducted towards PF (Provident Fund) and a **sum of ₹ 11,000/- has been deducted towards VPF (Voluntary Provident Fund)**, apart from miscellaneous deductions of ₹ 132/-, ₹ 290.7 and ₹ 102/- towards canteen charges (for tea, lunch etc.), ₹ 100/- towards superannuation fund, ₹ 10/- towards Haryana Welfare Fund, ₹ 2000/- towards transport charges, etc.

9. The respondent has also placed on record detailed chart (Annexure P-9) to show his liabilities, which comes to ₹ 1,08,085/-. A perusal of the same goes on to show that:

(i) he borrowed LIC Loan-1 for an amount of ₹ 13,00,000/- on 25.11.2010, of which he is paying EMI of ₹ 15808/-, which is still running and the same is shown to be a loan against property for sister's study and house construction (Annexure P-11 is the approval letter of the same, which shows that it was a Housing Loan only). Further, this is a housing loan, whereas the respondent thorough out denied of having any immovable property in his name.

(ii) he further borrowed LIC Loan-2 for a sum of ₹ 6,50,000/- on 06.05.2011, of which he is paying EMI of ₹ 8254/-, which is still running and the same is shown to be a loan for self marriage/sister's study (Annexure P-12 is the approval letter of the said loan, which is again a housing loan). This is also a housing loan.

(iii) he further borrowed HDFC Loan-1 of ₹ 4,49,000/- in January 2012 **and the same was closed in March 2015**, of which he was paying EMI of ₹ 10741/- (Annexure P-13 shows that it was a personal loan).

(iv) he further borrowed HDFC Loan-2 for a sum of ₹ 8,91,000/- in August 2014 and **the same was closed in May, 2016**, of which he was paying EMI of ₹ 20,848/- (Annexure P-14 shows that it was a personal loan).

(v) he further borrowed HDFC Loan-3 for a sum of ₹ 7,50,000/- in March 2015 **and the same was closed in May 2016**, of which he was paying EMI of ₹ 17,549/-. Annexure P-15 shows that it was a personal loan.

(vi) he further borrowed HDFC Loan-4 for a sum of ₹ 13,40,000/- in May 2016, which is still running, of which he is paying EMI of ₹ 29,463/- (Annexure P-16 shows that it is a personal loan).

(vii) he further borrowed HDFC Loan-5 for a sum of ₹ 3,00,000/- in April, 2017, which is still running, **of which he is paying EMI of ₹ 6560/-** (Annexure P-17 shows that it is a personal loan).

In the said chart, the respondent has mentioned that he is paying ₹ 18,000/- per month towards rent and placed on record photocopy of the Rent Agreement as Annexure P-10, which was executed on

13.3.2018. This court has minutely perused this chart as placed on record by the respondent to show that out of his net income, his total expenditure comes to ₹ 1,08,085/-. However, one thing which is very interesting to notice here is that when HDFC Loan-1 was closed in March, 2015, he borrowed HDFC Loan-3 in March 2015 itself. Further, when HDFC Loan-2 and HDFC Loan-3 were closed in May 2016, he borrowed HDFC Loan-4 closed in May 2016 itself. As per petitioner no.1-wife, she was thrown out of the matrimonial home on 29.03.2013 and she filed the petition under Section 125 Cr.P.C. on 16.09.2013 and the HDFC Loan-2 to 5 have been borrowed, after the institution of the petition under Section 125 Cr.P.C.

10. This court again turns to the salary slip Annexure P8, as per which after deductions (as reflected above), the net salary of the respondent comes to ₹ 1,05,885/- per month, which does not include deduction of ₹ 11,000/- towards VPF (**Voluntary Provident Fund**) which is involuntary.

11. Section 125 Cr.P.C. stipulates that if any person having sufficient means neglects or refuses to maintain his wife, his legitimate or illegitimate minor child, who are otherwise unable to maintain themselves, shall be obligated to do so. A moral duty and a statutory obligation is cast upon the husband to maintain his wife, minor children, parents who otherwise are not capable of maintaining themselves. A person cannot be permitted to wriggle out of his statutory liability by way of availing huge loans and reducing a substantial amount of his salary for repayment of the same every month. Deductions that are made from the gross salary towards long term savings, which a person would get back at the end of his service and such as deductions towards Provident Fund, General Group Insurance

Scheme, L.I.C. Premium, State Life Insurance can be deemed to be an asset that he is creating for himself. In arriving at the income of a party only involuntary deductions like income tax, provident fund contribution etc. are to be excluded. Therefore, such deductions cannot be deducted or excluded from his salary while computing his "means" to pay maintenance. In the case of ***Dr. Kulbhushan Kunwar v. Raj Kumari 1971 AIR (SC) 234*** while deciding the question of quantum of maintenance to be paid, the argument raised that deduction not only of income-tax but also of house rent, electricity charges, the expenses for maintaining a car and the contribution out of salary to the provident fund of the appellant was not allowed. Only deductions towards income-tax and contributions to provident fund which had to be made compulsorily were allowed. The relevant portion of ***Dr. Kulbhushan Kunwar's*** case (supra) reads as under :-

> *"19. It was further argued before us that the High Court went wrong in allowing maintenance at 25% of the income of the appellant as found by the Income Tax Department in assessment proceedings under the Income Tax Act. It was contended that not only should a deduction be made of income-tax but also of house rent, electricity charges, the expenses for maintaining a car and the contribution out of salary to the provident fund of the appellant. In our view some of these deductions are not allowed for the purpose of assessment of "free income" as envisaged by the Judicial Committee. Income Tax would certainly be deductible and so would contributions to the provident fund which have to be made compulsorily. No deduction is permissible for payment of house rent or electricity charges. The*

> *expenses for maintaining the car for the purpose of appellant's practice as a physician would be deductible only so far as allowed by the income-tax authorities i.e. in case the authorities found that it was necessary for the appellant to maintain a car."*

In a nutshell, a husband cannot be allowed to shirk his responsibility of paying maintenance to his wife, minor child, and parents by availing loans and paying EMIs thereon, which would lead to a reduction of his carry home salary.

12. In **Vinny Parmvir Parmar v. Parmvir Parmar, (2011) 7 Scale 741,** the Supreme Court held that the quantum of maintenance inter alia depends on the status of the husband. There, the Court recalled the considerations as follows:

> *"12.........................The Court has to consider the status of the parties, their respective needs, the capacity of the husband to pay, having regard to reasonable expenses for his own maintenance and others whom he is obliged to maintain under the law and statute. The courts also have to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and mode of life she was used to live when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the other party..........................".*

13. Similarly, in **Jasbir Kaur Sehgal v. District Judge, Dehradun and Ors., 1997 (7) SCC 7,** the Supreme Court held that there can be no set formula laid down for fixing the amount of maintenance. Rather, it depends on the facts and circumstance of each case. Thus, the Court must consider

the status of the parties, their respective needs and the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance. Accordingly, the amount of maintenance should be such that the wife is able to live in "reasonable comfort" considering her status and lifestyle she had while living with her husband and she does not feel handicapped during the prosecution of her case.

14. In the present case, the carry home net income of the respondent (inclusive of house rent and other miscellaneous allowances), after deductions towards Income Tax, Provident Fund etc. is amounts to approximately ₹ 1,16,885/- per month. The involuntary VPF (Voluntary Provident Fund) of ₹ 11,000/- is added to the net income. The repayment towards installments of housing loan of ₹ 15,808/- (LIC Loan-1 taken towards house construction and sisters study) and repayment of ₹ 8254/- (LIC Loan-II taken on account of his marriage and sister's study) and repayment of other loans cannot be taken as statutory deductions. The respondent ought to have placed his ITR and computation sheet on the record to establish his exact income and liabilities, which he has failed to do. The contention raised that he has the responsibility of looking after his old aged parents and sister is not sustainable. The detailed chart, which is placed on record as Annexure P-9 shows that mother of the respondent is getting pension of ₹ 25,769/- per month and in this regard, reliance has been placed upon the statement of account Annexure P-20. Though Annexure P-9 refers to three different loans borrowed by mother of the respondent, however, no such documents has been placed on record. Further, no document been produced on record to establish that sister of the respondent

is dependent upon him. Deduction from the gross pay would only be those which are statutorily allowed. Any repayment of personal loans cannot be agitated as legitimate deduction from his net salary.

15. The argument that petitioner No.1 was working and therefore cannot claim maintenance is again not sustainable. Reliance on document showing that she was working would have on bearing as these appointments were prior to her marriage. Nothing substantial is available to show that the petitioner No.1 is currently employed. The question of quantum had been decided by the Hon'ble Supreme Court in ***Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy, (2017) 14 Supreme Court Cases 200***, wherein it has been held that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the wife. The respondent herein has a responsibility towards his wife and the minor child and, therefore, keeping in view the carry home salary of the petitioner to be ₹ 1,16,885/- per month the maintenance amount payable to the petitioners i.e. wife and the minor child is enhanced to ₹ 20,000/- and ₹ 8000/- per month respectively. The enhanced payment of maintenance would be payable from the date of passing of this order. The impugned judgment dated 13.07.2015 is modified to this extent only.

16. In view of the above, CRR(F) No.205 of 2015 is allowed and CRR(F) No.276 of 2015 is dismissed.

(JAISHREE THAKUR)
JUDGE

October 3, 2018
vijay saini

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