

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

**CRR No.1145 of 2017 (O&M)
Date of Decision: 17.04.2018**

Chhinder Singh

....Petitioner

Versus

Cheenu

....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. A.S. Manaise, Advocate
for the petitioner.

Mr. Jagjit Gill, Advocate
for the respondent.

ANITA CHAUDHRY, J

The petitioner has impugned the order dated 09.01.2017 passed by the Additional Sessions Judge, Fazilka who upheld the order passed by the Magistrate on the application filed under Section 127 Cr.P.C.

An application under Section 125 Cr.P.C. was filed by the respondent and her mother, namely, Simarpal Kaur in 2003 seeking maintenance on the plea that Simarpal Kaur got married to Chhinder Singh in June, 2000. A daughter was born in February, 2003 and Chhinder Singh had failed to maintain them. The petition was contested. The marriage was denied. The parties were called upon to lead evidence. The trial Court partly allowed the maintenance application in the year 2011 disallowing maintenance to Simarpal Kaur whereas Rs.2500/- per month was allowed to

the child. The order was challenged in revision which was dismissed. The order denying maintenance to Simarpal Kaur was upheld. While those proceedings were on, application was filed under Section 127 Cr.P.C. in May, 2014 seeking enhancement of maintenance. It was pleaded that the expenses had increased and the child was in the hostel. The petition was contested by Chhinder Singh who in his reply submitted that he was married and had liabilities towards his family and ailing wife. The trial Court enhanced the maintenance to Rs.15,000/- per month vide order dated 06.06.2016. Aggrieved by that order a revision was preferred which was dismissed on 09.01.2017. The petitioner has challenged both the orders namely, 06.06.2016 passed by the trial Court and order dated 09.01.2017 passed by the Sessions Judge on the ground that the Court had wrongly taken into account the hostel charges for computing the expenses when it held that the child would require Rs.12,000/- to Rs.15,000/- per month for maintenance when there was no evidence that the child was staying in the hostel or was paying hostel charges.

I have heard both the sides and have gone through the documents paced on record by the parties.

Learned counsel for the petitioner contends that the Courts have already held that there was no marriage between Simarpal Kaur and Chhinder Singh and they were disputing only the amount allowed to the child. It was urged that an official from the School had appeared as a witness and he did not bring any record to show that the child was admitted in the hostel and the documents relied upon by the respondent, to show the expenses could not have been considered and they were ready to pay a reasonable amount but the amount which has been allowed is highly

excessive. It was urged that the marked documents could not have been considered. The counsel had referred to the statement made by Sunil-AW/3, accountant of the School. It was urged that if a sum of Rs.57,000/- is deducted then the expenses would be much less. It was urged that the trial Court in Para-15 of the order had noted that the hostel expenses were to the tune of Rs.57,140/- whereas the fees paid was only Rs.18,910/- per annum and the trial Court had added Rs.48000/- per annum towards medical expenses for a year, thus, raising the total to Rs.1,43,000/- and wrongly made the calculation assuming that the expenses that would be required would be between Rs.12,000-15,000 per month. It was urged that the petitioner is married and he has two children and the trial Court had noted that the income in hand was a little over i.e. Rs.45000/- per month and it is difficult for him to spare this amount for the respondent.

On the other hand the submission was that the amount allowed was just adequate as it is not only the educational expenses which are to be met but there are other expenses besides the educational expenses which were not taken note of.

It is not in dispute that there was no marriage between the petitioner and mother of the respondent and therefore maintenance had been denied to Simarpal Kaur. It is admitted that that the petitioner is married and has two children and he is also legally bound to support them. The main contention of the petitioner is that the Courts below have added Rs.57,000/- per annum as expenses for the hostel. Counsel had referred to the statement made by Sunil. The witness had brought the record but had stated that he had no evidence which could support the fact that the child had ever resided in the hostel in their School. The trial Court had added hostel fees to

Rs.57,000/- per year without any basis. Some of the receipts which were placed on record did refer to the hostel charges but surprisingly no evidence was led to show that the child ever resided in the hostel.

The Magistrate in his detailed order had noted the annual charges and the hostel fee being paid and relied on some receipts and added a sum of over Rs.57,000/- per annum as hostel fees. It also allowed Rs.4,000/- per month for medical treatment and calculated the total amount required for the child to be Rs.1,43,000/-.

The submission of the counsel is that if an amount which was allowed as hostel expenses was deducted, the sum would be much lesser and the Court had wrongly taken the monthly expenses to be Rs.15,000/- per month.

No evidence had been led by the respondent to show that the child was in the hostel or any hostel fees had been paid though record had been summoned from the School.

The marked receipts could not have been taken note of. If the amount of Rs.57,000/- is deducted, the amount for the education would be over Rs.13,000/- per annum. The Tribunal had allowed Rs.48,000/- as medical expenses and Rs.15,000/- for the uniform, books, stationary etc. The total of this would come to Rs.76,000/-. These are not only the expenses which the mother will have to incur, there would be expenses on clothing, food, tuition etc. Therefore, keeping the evidence into view and also keeping in mind that the petitioner has also a family to support, a sum of Rs.11,000/- per month would be appropriate, therefore, the order passed by the Courts below is modified and it is held that the respondent was only entitled to Rs.11,000/- per month.

At the close of the submission, it had also been stated on behalf of the respondents that the child was not studying now. In that case no amount for educational expenses would be paid after the withdrawal of the child from the School and the respondent would fairly disclose those details to the Executing Court.

The petition is partly allowed.

April 17, 2018

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**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No