

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

CRR(F) No.282 of 2016 (O&M)
Date of Decision: August 10, 2018

Ravinder Yadav @ Ravi

...Petitioner

Versus

Vandana and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. A.P.S. Deol, Senior Advocate with
Mr. Himmat Deol, Advocate
for the petitioner.

Mr. S.K. Aggarwal, Advocate
for respondents No.1 and 2.

Mr. P.R. Yadav, Advocate
for the applicant in CRM-18334-2018.

None for the applicant in CRM-15513-2017.

JAISHREE THAKUR, J.

1. This criminal revision has been filed under Section 19(4) of the Family Courts Act, 1984 read with Sections 401 and 397 of the Code of Criminal Procedure (for short 'Cr.P.C.') seeking to challenge the judgment passed by the Family Court, Gurgaon dated 03.08.2016 allowing maintenance to the respondents-complainants whereby, the petitioner herein has been directed to pay a sum of ₹ 55,000/- per month to respondent No.1 wife and ₹ 25,000/- per month to respondent No.2-minor son from the date of filing of the petition, with a further direction to clear all arrears of

maintenance within a period of six months and to pay future maintenance on or before the 10th of every month in the bank account of respondent No.1.

2. In brief, the facts of the case are that a marriage was solemnized between petitioner-Ravinder Yadav and complainant-respondent No.1 Smt.Vandana on 14.01.2004. This was third marriage for both the parties and out of this wedlock, a male child was born on 13.11.2004. It was alleged by complainant- respondent No.1 (hereinafter referred to as 'the respondent') that the marriage did not survive long, on account of constant demand of dowry and ill treatment meted out to her at the hands of the petitioner and his mother. It was stated that apart from the ill treatment, the petitioner was also involved with another lady. She was ultimately turned out of her matrimonial home on 07.06.2013 along with the minor child. Having no independent source of income, both the respondents filed a petition under Section 125 Cr.P.C. claiming maintenance, by alleging that the petitioner is an agriculturist and apart from this, he is doing the business of property dealing and is also running the guest houses at Gurgaon and earns ₹ 50,000/- per month from each guest house.

3. The petition filed by the respondents was contested by the petitioner by filing a written statement and all the allegations were denied.

4. Respondent No.1 herein appeared in the witness box and get herself examined as PW1, while examining Sanjay Gulati as PW2, K.R. Meena as PW3, Jagvir Singh Koyal as PW4, Sanjay Arora as PW5, Parkash Chand as PW6 and Harish Dagar as PW7. Documents Ex.P1 to Ex.P33 and Mark-A1 to Mark-A5 were also relied upon, including the accounts statements of the petitioner herein. Whereas, the petitioner herein only

examined himself as RW1.

5. After hearing both the sides and after going through the record of the case, the District Judge, Family Court, Gurgaon by the impugned judgment dated 03.8.2018 held respondent No.1-wife entitled to ₹ 55,000/- per month and respondent No.2-minor son entitled to ₹ 25,000/- per month towards maintenance.

6. Mr. A.P.S. Deol, Senior Advocate with Mr. Himmat Deol, Advocate, counsels appearing on behalf of the petitioner contends that the amount of maintenance as assessed is highly excessive. It was argued that being a retired personnel from the Indian Army, he only has his pension to support himself and the two children born out of the wedlock from his first marriage. It is submitted that the petitioner suffered from Pulmonary Tuberculosis & Bronchitis, due to which he was discharged by the Medical Board on 31.07.1980 with a meager disability pension and had no other business except to assist his father in agriculture. It was further argued that his son born from his first marriage suffered from meningitis as a child, which had effected his right hand and leg, and therefore, he had to maintain the said child even though he was a major. The petitioner treated the respondent wife with care, however, she continued to misbehave, which compelled the petitioner to leave the matrimonial home and he even filed a petition under Section 9 of Hindu Marriage Act, which was dismissed as withdrawn and thereafter, a petition under Sections 13(1) (ia) (ib) of the Hindu Marriage Act has been filed against complainant-respondent No.1 herein on the ground of cruelty and desertion and the same is pending. It is submitted that the petitioner herein had purchased a flat in the name of

mother of complainant-respondent No.1 and the sale deed was executed on 17.06.2011.

7. Per contra, Mr. S.K. Aggarwal learned counsel appearing on behalf of the respondents-complainants submits that the petitioner herein is a man of substantial means and during the pendency of the present criminal revision, had agreed to transfer 06 acres of land in District Gurgaon in favour of his minor son (respondent No.2 herein), who is 12 years old and also deposit adequate amount for his education for the next 10 years, however, the said land/amount was never transferred. It is also argued that the statement made by the petitioner in the court that he is supporting his two minor children born from the first marriage, is patently false since the children were being brought up by the maternal grandparents and that the daughter had since got married. It was also submitted that the documents produced on the record would clearly reflect that the petitioner has sufficient means to pay the maintenance.

8. I have heard learned counsel for the parties, apart from perusing the record of the case with their assistance.

9. There is no dispute about the fact that a marriage was solemnized between the petitioner and respondent No.1 on 14.01.2004 and out of this wedlock, a minor child namely Nischay-respondent No.2 was born on 13.11.2004.

10. The sole question that arises for consideration of this court is ***whether the quantum of maintenance as assessed by the Family Court, Gurgaon is excessive or not.***

11. The District Judge, Family Court, Gurgaon by the impugned

judgment and on appreciation of evidence and documents produced on record, came to hold that complainant-respondent No.1 is entitled to ₹ 55,000/- per month and that respondent No.2-minor child is entitled to ₹ 25,0000/- per month as maintenance, from the date of filing of the petition. All the arguments, so raised before this court, were also raised before the trial court and the same were duly considered by the trial court. The District Judge, Family Court, Gurgaon (in para 8) has observed that the claim of the petitioner-husband that he is surviving merely on his pension is patently false. It was noted that pension account of petitioner, which was produced on record as Ex.P24, did not reflect a single withdrawal made from the said account since April 2013, which falsified the stand of the petitioner that he is sustaining himself, his mother and two children from his first marriage, from his pension. The trial court also noted that in his deposition as well as in his pleadings, the petitioner has stated that both his children, who are now adults, are living with their maternal grand parents, however, at the time of arguments, a stand was taken that the petitioner is maintaining them and from this conduct of the petitioner herein, the trial court observed that the petitioner is not maintaining those children. The trial court also observed that in his cross-examination the petitioner admitted that his daughter studied in Mayo School for Girls at Ajmer, however, his claim that he took money from his brother for making the payment was disbelieved, as he failed to lead any evidence in this regard.

12. The trial court has also placed reliance upon certificate Ex.P18 issued by Sanjay Gulati, Chartered Accountant (PW2), who made an assessment in the year 2010, in which the assets of the petitioner have been

shown to be worth ₹ 9,67,32,434/-. The bank account details of the petitioner Ex.P19 to Ex.P23 and Ex.P25 to Ex.P29 were also scrutinized by the trial court, in which money had been received from shares or huge amounts had been withdrawn and these accounts were closed after the filing of the petition. The trial court further took note of the fact that there was a clear admission by the petitioner herein that he closed the accounts with ICICI Bank, PNB Sukhrali, SBI Mehrauli Road, Gurgaon, SBP Mini Sectt. Gurgaon, after the filing of this petition. The trial court also noted that the complainants herein moved two applications under Section 91 Cr.P.C. seeking production of bank account details and property statements of the petitioner herein, however, the petitioner denied having any bank account or FDR other than his pension account, while also claiming that he owned no other property except 6 acres of land in Village Badkhera. Furthermore the trial court observed that the petitioner had very clearly tried to conceal material facts from the court, obviously to deprive the complainants of their rightful claim by concealing his true income and assets.

13. All allegations as raised by the counsel for the petitioner re: cruelty at the hands of the respondent or the allegations raised by the counsel for the respondent regarding cruelty, or whether the petitioner herein was having an affair, are not within the purview of this court in proceedings under Section 125 Cr.P.C. since, a petition under Section 13 of Hindu Marriage, on the ground of cruelty and desertion is stated to be pending between the parties. This court cannot lose sight of the fact that in these proceedings, the question regarding quantum of maintenance is to be dealt with, and therefore, any comment or observation if so made by this

court with regard to the above allegations, would in all likelihood prejudice the mind of the court below, where the petition under Section 13 of Hindu Marriage Act is pending .

14. So far as the argument raised by the counsel for the petitioner regarding purchasing property in the name of mother of complainant-respondent No.1 is concerned, the same is denied by complainant while appearing in the witness box as PW1 . The respondent relied upon Ex.R2, which would reflect two entries of withdrawal of ₹ 9 lacs each. The petitioner-husband did not lead any evidence to rebut this stand of respondent No.1-wife. So, this contention of the petitioner-husband is not tenable.

15. The other witnesses examined by the respondents before the trial court, also belied the stand of the petitioner-husband that he has no source of income except his pension. PW2 Sanjay Gulati, proved on record certificate issued by him reflecting total assets of petitioner-husband at ₹ 9,67,32,434.07 in the year 2010. PW3 K.R. Meena, Chief Manager, Punjab and Sind Bank, Ram Leela Ground, Gurgaon proved on record account statement of M/s Datara Estate, of which firm the petitioner-Ravinder is a partner. PW4 Jagvir Singh Koyal, Senior Officer, ICICI Bank, Sector 14, Gurgaon brought on record the documents relating to bank account of the petitioner having an opening balance of ₹ 1,46,253.84 as on 01.01.2013. Similarly, PW5 Sanjay Arora, Clerk, Punjab National Bank, Sukhrali, brought on record the documents relating to bank account of the petitioner having opening balance of ₹ 1,46,061.95 as on 01.01.2013 and again there was no withdrawal in the said account, till the same was closed on

19.10.2015. PW6 Parkash Chand, Customer Assistant, State Bank of India, Mehrauli Road, Gurgaon brought on record the documents pertaining to pension account of the petitioner, which shows that for the period from 1.1.2013 to 14.3.2016, no withdrawal had been made in the said account. PW7 Harish Dagar, Single Window Operator, SBP, Mini Sectt. Gurgaon, proved on record the documents showing that a sum of ₹ 3 lacs was withdrawn on 08.08.2015 jointly by Ravinder and Rama and similarly, a sum of ₹ 6 lacs was withdrawn on 06.08.2015. On 01.08.2015, a sum of ₹ 6 lacs was withdrawn through cheque by Rama.

16. During the course of his cross-examination, the petitioner while appearing in the witness box as RW1 admitted that his daughter Nitti has been studying in Mayo Girls School Ajmer and he had been paying her fee regularly. He also admitted that he was doing the real estate business under the name and style of Datarta Estate, Silokhra Mor, Sector 30, Jalvayu Vihar, Gurgaon and had got registered the said firm with the Registrar of Firms Ex.P30. He has also admitted that he is holder of passport and has gone to abroad thrice. He also stated that he has not got any property in inheritance from his father. He has also admitted that he had contested election of the seat of Member of Parliament in the year 1999.

17. During the course of pendency of the instant criminal revision in this court, respondent No.1 claimed that the petitioner was owner of vast properties and had also purchased immovable properties in the name of his mother and sister. A list of the said properties was furnished to the court. The State of Haryana was directed to conduct a verification through the Investigating Officer of the case, as to the veracity of the statement that had

been made. As per the status report filed, petitioner Ravinder is owner or shareholder in the following properties;

(i) owner in possession of 1/4th share of Killa No.34/1/2 and 34/10/3(0-8) Gair Mumkin plot and baara in the revenue estate of Village Silokhra and value of the said property is assessed to be ₹ 2 crores by the architect and valuer Sh. Tarif Singh Koshal (property mentioned at Sr. No.1 of the list filed);

(ii) having 976/3514 share of total rakba 175 kanal 14 marla, which comes to 48 kanal 16 marlas within the revenue estate of village Ratikanno Abaad alias Badkhera, Tehsil Sohna, District Gurugram (property mentioned at Sr. No.7 of the list filed).

18. Further, as per the status report filed by the State of Haryana, the mother of the petitioner namely Rama Devi is owner of one Babbrak Shah Babur in village Kadipur, Gurugram and the value of the said house has been assessed at ₹ 1.5 crores by Sh. Tarif Singh Koshal, Architect (property mentioned at Sr. No.4 of the list filed). She is also owner of House No.531, Sector 31, Gurugram and value of the said house has been assessed to be at ₹ 1.5 crores (property mentioned at Sr. No.8 of the list filed). Apart from this, Rekha Yadav, sister of the petitioner is owner of Flat No.E-105, Sector 15-II, Gurugram, which is valued to be ₹ 80 lacs (property mentioned at Sr. No.7 of the list filed) and she is also owner of commercial property having area of 325 sq. yards in the village Kadipur and collector rate of the same has been assessed to be ₹ 28,900/- per sq. yards for the year 2016-17 (property mentioned at Sr. No.9 in the list filed).

Whereas, properties mentioned at Sr. No.3, 5 and 6 of the list filed did not

belong to petitioner or his family members.

19. Section 125 Cr.P.C has been enacted as a measure of social Justice to ensure that a wife, minor child or old-age parents are maintained and not subjected to vagrancy and destitution. Grant of maintenance has been perceived as a measure of social Justice by the courts and the said section falls within the Constitutional sweep of Article 15 (3) reinforced by Article 39 of the Constitution of India. By providing a simple, speedy but limited relief, the legislation seeks to ensure that the neglected wife and children are not left destitute and thereby driven to a life of vagrancy, immorality and crime for their substance.

20. From a reading of the evidence led, documents produced on the record and the status report filed, it is abundantly clear that the petitioner herein is not dependent only on his pension, as claimed by him, since no withdrawal have been made from the said account. It is also abundantly clear that mother of the petitioner herein is a person of independent means, having substantial property in her name and therefore not dependent upon the petitioner. As per the statement of the chartered accountant, the petitioner had immovable assets worth ₹ 9,67,32,434/-. The pension account was not utilized which is indicative of the fact that the petitioner had other funds averrable to him. The petitioner was maintaining different accounts in different banks (as discussed above), however, closed the same during the pendency of the present litigation in an attempt to hide his financial worth. The petitioner was also doing the real estate business under the name of style of Datara Estate in Gurgaon. In order to avoid his liability to maintaining the respondents, the petitioner did not disclose his assets

despite two applications filed under Section 91 Cr.P.C. This clearly reflects that the petitioner was obstructive. In this background, this court has no hesitation in endorsing the observation of the trial court that ***the petitioner herein has very obviously and actively tried to mislead the court by not only making false averments, but also by concealing his true income and assets.***

21. The respondents herein are the wife and minor child of the petitioner and would definitely be entitled to maintenance, as claimed by them. Except, the said respondents, he does not have any other liability. The son and daughter of the petitioner from his first marriage are not residing with the petitioner and they are residing with their maternal grand parents and the petitioner is not maintaining them. The daughter has since got married. Therefore, this court can easily conclude that the petitioner who is the owner of aforementioned properties in his name; having visited abroad thrice; also contested the election of Member of Parliament in the year 1999; whose daughter had studied in Mayo Girls School, Ajmer, one of the reputed and costly schools; and who himself got his son, respondent No.2 Nishchay admitted in Shri Ram School, Aravali in the year 2013, cannot by any stretch of imagination, be said to be a person of meager means, or that the maintenance is excessive.

22. It would also be pertinent to mention, while disposing of this petition, that not only did the petitioner offer to transfer land and take care of the minor's education for the next ten years (which did not fructify) but he also made an offer to settle the respondents in an apartment and purchase one for them. The offers that were brought forth were totally unacceptable

as per the status of the family, being one roomed flat and that to in an unsafe/unsavory neighbourhood or a flat which was incomplete. The conduct of the petitioner itself showed that an attempt was being made to delay the proceedings.

23. Apart from above, during the pendency of the instant criminal revision, criminal miscellaneous application dated 04.05.2017 bearing No. CRM-15513-2013 was preferred by Rajeev Yadav, brother of the petitioner herein, for impleading him as respondent No.3 alleging that both the parties herein are in collusion with each other trying to create complications so that they may extract money from the applicant and his family. Thereafter, criminal miscellaneous application dated 15.05.2018 bearing No.CRM-18334-2018 came to be filed by Rama Devi, mother of the petitioner herein, for impleading her as respondent No.4, with the further prayer for dismissal of application of proposed respondent No.3-Rajeev Yadav, alleging that said applicant Rajeev Yadav is hand in glove with respondent No.1 herein.

24. This court does not deem it necessary to go into the allegations raised in the aforesaid two applications, which came to be filed after the respondent-State filed status report on 05.04.2017, in response to the list of the properties of the petitioner herein submitted by complainant-respondent No.1. If both the applicants have any grievance regarding their rights in any of the property, they can avail of their remedy in accordance with law. The applicants are not necessary parties in the lis which pertains to proceedings initiated under Section 125 Cr.P.C.

25. In view of the foregoing discussion, this court is of the considered view that there is no merit in the instant criminal revision and

the same is hereby dismissed with costs of ₹ 30,000/-. The petitioner herein is directed to clear that arrears of maintenance within a period of three months from today. Record of the trial court be sent back.

August 10, 2018
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No