

CRR(F)-370-2016(O&M) &
CRR(F)-294-2017(O&M)

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

(1) CRR(F)-370-2016(O&M)

Anju and another

...Petitioners

Versus

Sonu

...Respondent

(2) CRR(F)-294-2017(O&M)

Sonu

...Petitioner

Versus

Anju and another

...Respondents

Date of decision:11.7.2018

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

Present: Mr.Parminder Singh, Advocate
for the petitioners in CRR(F)-370-2016 and
for the respondents in CRR(F)-294-2017.

Mr.Gaurav Bansal, AAG, Haryana.

Mr.Ashish Gupta, Advocate
for the respondent in CRR(F)-370-2016 and
for the petitioner in CRR(F)-294-2017.

H.S. MADAAN, J.

By this order, I shall dispose of two criminal revisions i.e. CRR(F)-370-2016 filed by petitioners Anju and her son Krish and CRR(F)-294-2017 filed by petitioner Sonu.

The petitioners in CRR(F)-370-2016 have filed the revision petition being aggrieved against the judgment dated 30.9.2016 passed by District Judge (Family Court), Karnal vide which petitioner No.1 Anju was granted maintenance @ Rs.10,000/- per month and petitioner No.2 Master Krish, minor son of petitioner No.1 and respondent @ Rs.5,000/- per month from the date of filing of the petition. The petitioners pray that the judgment be modified and a sum of Rs.1 lakh each be granted as maintenance payable by the respondent.

Whereas, the petitioner in CRR(F)-294-2017 is also aggrieved by the abovesaid judgment passed by District Judge (Family Court), Karnal and prays for dismissal of the petition filed by the petitioners.

Briefly stated, the facts of the case as can be gathered from the contents of the petition are that petitioner No.1 in CRR(F)-370-2016, namely, Ms.Anju was married with respondent Sonu on 19.8.2008 at Karnal; that though a sum of Rs.25 lakhs was spent by mother and brothers of petitioner Anju at the time of her marriage with respondent and dowry articles had been given but family members of respondent were not satisfied with that and they used to taunt Anju for bringing insufficient dowry, rather they asked Anju to prevail upon her mother to transfer 1/4th share in her land in the village, in her favour besides

demanding a sum of Rs.10 lakhs as a share of petitioner No.1 in a plot; that they raised various such demands; that Anju was being harassed and tortured by her in-laws family in order to make her bring more dowry from her mother, brothers etc.; that several Panchayats were convened but to no effect; that FIR No.238 dated 26.3.2012, under Sections 498-A, 323, 376/511, 506 IPC was lodged with Police of Police Station City, Karnal, however, the matter was not investigated properly; that the dowry articles were not recovered by the police. It is stated that a similar petition had been filed earlier but on assurances being given by the respondent that he would live with petitioner in a cordial manner, that petition was dismissed for want of prosecution on 28.10.2013. It is contended that on 28.10.2013 petitioner No.1 was given beatings and thrown out of the matrimonial home along with petitioner No.2 and since then she is residing at her parental house along with her minor son; that her mother had convened several panchayats for rehabilitation of the petitioners in matrimonial home but to no effect. According to the petitioners, the respondent has been working in Australia and he owns land in village Bichpari; that he is running a hotel by the name of Noon Haveli at Karnal, therefore, he has got income of Rs.2 lakhs per month and the petitioners are therefore entitled to receive maintenance @ Rs.50,000/- per month for petitioner No.1 and Rs.20,000/- per month for petitioner No.2 besides litigation expenses of Rs.22,000/-.

On getting notice the respondent appeared and had filed reply and took preliminary objections that the petition is not legally maintainable as the petitioner had already filed a petition under Section

125 Cr.P.C., which was dismissed; that the petitioner No.1 has also sought maintenance under Protection of Women from Domestic Violence Act, which is pending; that no cause of action arose to file the petition; that petitioner No.1 is in a position to maintain herself and her child; that the respondent is ready to keep petitioner No.2 with him; that respondent has neither neglected nor refused to keep petitioner No.2 and petitioner No.1 deserted him of her own; that petitioner No.1 had made a complaint under Section 498-A IPC against the respondent and his family members but those allegations were found to be false; that the marriage between the parties was a simple affair; that petitioner No.2 was born on 19.8.2008; that the parties were shifted to Brisbane (Australia) at the instance of petitioner No.1; that since the father of petitioner No.1 had died while she was a child, therefore, there was no question of taking dowry in view of the financial condition of her family, which was not good; that the attitude of petitioner No.1 has been very rude and she had left the matrimonial home on 5.8.2013 and living at her parental house; that the petitioner No.1 is a Bachelor of Arts and she has done a diploma in Computer applications; that she is drawing a handsome salary and is in a position to maintain herself and her minor son; that the respondent had got petitioner No.2 admitted in Dayal Singh Public School and the admission fee besides the initial fee was paid by him by taking a loan from his friends. According to the respondent, he is receiving training at a shop at Anaj Mandi, Jundla and getting a meagre salary of Rs.4,000/- per month in his capacity as a trainee.

During the course of evidence, the petitioner No.1 examined

herself as PW1 and thereafter closed her evidence. Whereas in rebuttal respondent appeared as RW1 and closed the evidence.

After hearing arguments, the impugned order was passed.

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

Section 125 Cr.P.C. deals with orders regarding maintaining of wife, children and parents. It provides that if any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) x x x

(d) x x x

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

In the instant case relationship between the parties is admitted so is the fact that they are residing separately. It is a specific case of petitioner No.1 Anju that after her marriage with Sonu, the latter and his family members being not satisfied with the dowry given used to harass and maltreat her in order to force her to bring more dowry articles and persuade her mother to transfer 1/4th share of property in her favour.

Despite Panchayats of respectables being convened, her husband and

family members did not mend their ways, as such, she had to lodge an FIR No.238 dated 26.3.2012, under Sections 498-A, 323, 376/511, 506 IPC with Police of Police Station City, Karnal. She had filed a petition earlier but on assurance given by her husband that was dismissed, but the things did not improve and she along with her minor son have been turned out of the matrimonial home w.e.f. 28.10.2013 and since then she is putting up with her parents.

Though such allegations are being controverted by the respondent stating that he is ready to keep both the petitioners and he had not neglected or refused to maintain them; that he has not harassed the petitioner in any manner; that the behaviour of the petitioner No.1 herself has been bad and she has left the matrimonial home of her own on 5.8.2013 but then it has to be kept in mind that no married woman having a minor child would leave the matrimonial home without any justifiable reason. The allegations levelled by the petitioner No.1 as regards her maltreatment and harassment at the hands of her husband and his family members on account of demand of dowry are corroborated by the fact that she had lodged an FIR for the offences under Section 498-A, 323 etc. and she had filed a petition for maintenance earlier also. She had also filed a petition under Protection of Women from Domestic Violence Act, 2005, which is stated to be pending. The fact that the petitioner Anju is residing at her parental place along with her minor child and she is involved in civil as well as criminal litigation with the respondent goes to show that all was not well in the matrimonial home and behaviour of respondent had forced her to leave the matrimonial home along with the minor child and

that she is residing at her parental place for justifiable reasons. According to petitioner No.1 - Anju, she does not have any source of income and is unable to maintain herself and the minor child, whereas the respondent having sufficient means has neglected and refused to maintain her and the minor child. As per the case of petitioners, the respondent has been working in Australia and is owner of rural as well as urban properties earning Rs.2 lakhs per month. However, he has neglected and refused to maintain the petitioners. The respondent has admitted that parties had been shifted to Brisbane (Australia) though stating that it was at the instance of petitioner No.1. It is his case that petitioner No.1 has done BA degree besides having diploma in computer applications and she is drawing handsome salary but these assertions do not seem to be convincing. The petitioner No.1 may be having good educational qualification but the crucial issue is whether she is working some where and if so what are her earnings and the respondent has not specifically mentioned as to where the petitioner No.1 is working and how much amount, she is drawing as salary. These assertions remained unproved. The petitioner No.2 is a minor and cannot be expected to have any source of income. Therefore, it stands established on record that petitioners were unable to maintain themselves. It is not the case of the respondent that he has been sending any maintenance to the petitioners ever since they are putting up at parental place of petitioner No.1. It was/is his moral and legal obligation to maintain his wife and minor son, who are unable to maintain themselves. He having not done so had obviously neglected and refused to maintain the petitioners.

The next question is that whether the respondent is having sufficient means. Though according to respondent, he is receiving training at a shop at Anaj Mandi, Jundla and getting a meagre salary of Rs.4,000/- per month as a trainee, but such plea of respondent is not acceptable. He having remained abroad and statedly having considerable properties, it is difficult to believe that he is working as a trainee at a shop at Anaj Mandi Jundla getting Rs.4,000/- per month. Now – a – days, even manual labourers manage to earn Rs.400/- to Rs.500/- daily. This is not disputed by respondent that his father owns landed property in Tehsil Gohana, District Sonapat and is running Hotel Noon Haveli at Pingli Road, Karnal. A brother of the respondent is stated to be residing in Australia. The trial Court considering these facts and assertions by the respondent that his father is a heart patient, therefore he had taken pre-mature retirement from Police Department has inferred that father of respondent is an aged and a heart patient and respondent is only son around as his other brother is in Australia, therefore, it cannot be believed that the respondent instead of looking after his father, family business and managing the land, which as per his admission is ancestral, is working in a company as an Accountant/Muneem on a meagre salary of Rs.4,000/- per month. The salary certificate of Rs.4,000/- produced by the respondent has rightly been rejected for the reasons given in the impugned judgment. Then there is admission of respondent that his father owns a Skoda car. The trial Court was justified in coming to the conclusion that in view of the financial situation of father of respondent, who owns a luxury car, agricultural land and a hotel, it could not be believed that respondent

could be working as a trainee for a sum of Rs.4,000/- only especially when his father is suffering from ailment and his other brother is in Australia. The trial Court has considered the social status of the parties, the financial position of the respondent, the requirements of the petitioners especially petitioner No.2 for his studies and bringing up while awarding maintenance amount to the tune of Rs.10,000/- per month to petitioner No.1 and Rs.5,000/- to the petitioner No.2 from the date of filing the petition. The said order do not call for any interference either at the instance of petitioners in CRR(F)-370-2016 for enhancement of the maintenance amount so awarded or at the instance of petitioner in CRR(F)-294-2017 for decreasing the same or outrightly refusing to grant any maintenance to the petitioners.

Finding no merits, both the petitions stand dismissed.

11.7.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No