

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

CRR(F)-398-2016

Date of decision:-19.7.2018

Pankaj

...Petitioner

Versus

Lakshay (minor) through his mother as natural guardian and next friend
Smt.Bharti.

...Respondent

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

Present: Mr.Suveer Sheokand, Advocate
for the petitioner.

Mr.Deepak Girotra, Advocate
for the respondent.

H.S. MADAAN, J.

This revision petition is directed against the order dated 30.8.2016 passed by District Judge, Family Court, Rohtak vide which while allowing application under Section 125 Cr.P.C. for interim maintenance, the Court has allowed maintenance @ Rs.6,000/- per month to Lakshay, minor son of Pankaj payable by the latter. The said father being aggrieved by that order has knocked at the door of this Court.

Briefly stated, facts of the case are that applicant Lakshay, minor son of Pankaj through his mother and natural guardian Smt.Bharti

had filed an application under Section 125 Cr.P.C. for grant of maintenance. Notice of that application was given to respondent, who put in appearance. The applicant had also filed an application for interim maintenance submitting that he does not have any source of income, whereas his father Pankaj is working as Clerk in Urban Local Department, Haryana getting salary of Rs.21,000/- per month, therefore, interim maintenance @ Rs.20,000/- per month should be granted to him from the date of the application along with litigation expenses of Rs.22,000/-.

The application was resisted by respondent contending that mother of the applicant is also getting salary of Rs.21,000/- per month; that the respondent is already paying an amount of Rs.3,000/- per month under Domestic Violence Act as directed by learned Additional Chief Judicial Magistrate, Rohtak, therefore, application be rejected.

The Court below while allowing the application has made following observations which for ready reference are reproduced as under:

“After hearing the contentions raised by respective counsel for the parties, it is evident from the pleadings that applicant Lakshay has filed the petition under Section 125 Cr.P.C. against the respondent Pankaj on the ground that applicant is unable to maintain himself whereas the respondent is earning Rs.21,000/- per month as respondent is working as Steno in Labour Department, Haryana. It is stated that it is the duty of the respondent to maintain the petitioner. It transpires that petitioner is studying in Scholar's Rosary School and as per the documents which

have been filed on behalf of the petitioner a sum of Rs.34,950/- were deposited on 9.3.2015 for the academic sessions 2015-16 being annual charges, admission charges and tuition fees, meals, transportation fees etc. for the month of April, May and June and therefore, approximately a sum of Rs.2,500/- is being paid towards monthly tuition fees of the applicant excluding transportation fees. The Court cannot lose sight of the fact that there are other expenses also of a child who is studying in a good school. As both the parents of the applicant are earning, hence, it is the responsibility of both the parents to contribute towards maintenance of the child. Reliance can be placed upon case titled as Vinit Sehgal Versus State of UP 2012(4) CCC 726 Allahabad High Court.

Considering the income of the respondent that it is not less than Rs.21,000/- per month, if expenses of the child are taken to be Rs.8,000/- per month, liability of father and mother can be apportioned in the ratio of 3:1 i.e. father has to contribute Rs.6,000/- per month and mother has to contribute Rs.2,000/- per month for the maintenance of the child.

Faced with this difficulty, Sh.Deepak Sethi, Advocate submitted that a sum of Rs.3,000/- is already being paid as interim maintenance by the respondent which was granted by learned Addl. Chief Judicial Magistrate, Rohtak and a revision petition had been filed by respondent Pankaj before

learned Addl. Sessions Judge, Rohtak which was dismissed and the respondent has other liability also and hence, grant of maintenance @ Rs.6,000/- is one the higher side. I do not find any merit in the contention raised. Price of commodities are increasing day by day and cost of living has become quite expensive. If the revision petition was dismissed against grant of maintenance @ Rs.3,000/- per month, same would not mean that an amount of Rs.3,000/- is sufficient for all times to come. Hence, the contention has no merit.

In view of above, the respondent is directed to pay a sum of Rs.6,000/- per month as interim maintenance to the petitioner from the date of the application. Any amount paid by the respondent in the proceedings under Domestic Violence Act will be liable to be adjusted against the amount which may constitute the arrears of interim maintenance granted under this application. Petitioner shall be entitled for litigation expenses which are quantified at Rs.5,500/-. With these observations, the application stands disposed of.

The respondent felt dissatisfied by that order and has knocked at the door of this Court by filing the instant revision petition, notice of which was given to respondent, who put in appearance through counsel.

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

Here relationship between the parties is not disputed so is the

fact that Master Lakshay, the minor son of the revisionist is residing with her mother, who is looking after and maintaining him. There is nothing on record to show that the minor has got any property in his name or has got any source of income with which he can be brought up and his basic needs got met. The minor cannot possibly work or earn any money. It is moral as well as legal duty of a father to maintain his minor son unable to maintain himself. Though the mother of minor is also working but that aspect has been taken into consideration by the Court below and the probable expenses for bringing up of the minor have been apportioned in the ratio of 3:1 and thereafter maintenance awarded. A child is entitled to get education and bringing up as per social and economic status of his parents. Of course, he is entitled to get good education and up-bringing. A growing child needs special diet. The expenses also need to be borne on account of health care, clothing, travelling, school fee, books, stationary, transportation charges for going to school. A sum of Rs.6,000/- so awarded is certainly not excessive. The order passed by the Court is based upon proper appraisal and appreciation of evidence and correct interpretation of law.

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 order much less apparent on the face of it. The order is certainly not in violation of settled principles of criminal

jurisprudence. I do not see any reason to upset the impugned order.

Resultantly, the revision petition stands dismissed.

19.7.2018

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No