

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

CRR(F)-64-2016(O&M)
Date of decision:-26.9.2018

Balbir Singh

...Petitioner

Versus

Harbhajan Kaur

...Respondent

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

Present: Mr.Tribhawan Singla, Advocate
for the petitioner.

Mr.Amaninder Preet, Advocate
for the respondent.

H.S. MADAAN, J.

CRM-8002-2016

Prayer made in the application is for condoning the delay of
74 days in filing the revision.

Heard. Sufficient cause has been shown for condonation of
delay in filing of the revision. The application is, therefore, accepted and
the delay of 74 days in filing of the revision is condoned.

CRR(F)-64-2016

Applicant Harbhajan Kaur had filed an application under Section 125 Cr.P.C. against her husband Balbir Singh, which was allowed *ex parte* vide order dated 1.11.2004 and she was granted monthly maintenance @ Rs.700/- per month from the date of application.

Attempts made by respondent – husband (herein petitioner), a Non Resident Indian putting up in Germany to get that order set aside futile and the order remained in operation.

Subsequently, Harbhajan Kaur filed an application under Section 127 Cr.P.C. for enhancement of monthly maintenance allowance, notice of which was given to respondent. After contest it was allowed by District Judge (Family Court) Barnala and monthly maintenance allowance was enhanced to Rs.10,000/- per month.

This order left the respondent – husband aggrieved and he has approached this Court by way of filing the present 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.

It transpires from the record that an application under Section 125 Cr.P.C. filed by Harbhajan Kaur against her husband Balbir Singh had been allowed *ex parte* and such *ex parte* order could not be got set aside by Balbir Singh. Thereafter, Harbhajan Kaur had moved an application under Section 127 Cr.P.C. for enhancement of monthly maintenance allowance for the reason that on account of rise in prices during the intervening period, it was difficult for her to make both ends

meet, therefore, she sought that the allowance be enhanced to Rs.7,000/- per month for the reason that the respondent is residing in Germany and is earning Rs.70,000/- to Rs.80,000/- per month and he can easily pay Rs.7,000/- per month to the applicant.

The respondent in those proceedings had contended that after marriage Harbhajan Kaur had refused to accompany him to Germany and she has been filing various cases against him to extract money inasmuch as she had got registered an FIR No.68 dated 31.12.1999 for the offences under Sections 406, 420 IPC against him with Police Station Bhadaur; the matter was later on compromised in terms of which Harbhajan Kaur got transferred 16 Kanals of land situated at village Moom in her name and then FIR had been quashed; a house was also given to her in addition to Rs.4,50,000/-, which facts are mentioned in order dated 7.3.2000 passed by this Court, in that way, the applicant (wife) had sufficient means and no ground is there to enhance the maintenance allowance.

Learned trial Court considering the stand taken by the contestants in light of the facts and circumstances of the case and evidence adduced by the parties came to the conclusion that enhancement in the monthly maintenance allowance was required and increased that allowance to Rs.10,000/- per month from the date of filing of application. The fact that applicant herself had claimed Rs.7,000/- per month as maintenance allowance perhaps skipped the attention of the trial Court.

After hearing the contention raised by the counsel for the petitioner here, I find that Harbhajan Kaur had been granted monthly maintenance allowance @ Rs.700/- per month way back in the year 2004

to be precise on 1.11.2004. The relationship between the parties is not disputed. Though according to respondent, 16 kanals of land was transferred in favour of Harbhajan Kaur and a sum of Rs.4,50,000/- was given to her in addition to a residential house, as such, she is not entitled to claim any maintenance. According to him, this was so done after registration of the FIR. If that was so, the petitioner - herein could himself have filed a petition under Section 127 Cr.P.C. asking for alteration in the monthly maintenance allowance or for that reason stoppage of payment of monthly maintenance allowance by him to Harbhajan Kaur but obviously he did not do so. 16 kanals of land means two acres of land and even if we take that one killa of land can fetch Rs.40,000/- per annum, as rent for two killas, the rent can be Rs.80,000/- per annum say Rs.6,500/- per month. As far as payment of Rs.4,50,000/- to Harbhajan Kaur, if the amount is invested with some bank in the form of FDR, it can draw at the most 6-7% of interest say Rs.2,000/- - Rs.2,500/- per month. Of course the residential house, if given is to be used for the purpose of residence. Thus, believing the contentions of petitioner herein, the respondent could generate $\text{Rs.6,500} + 2,000 = \text{Rs.8,500/-}$ in addition to getting Rs.700/- per month as maintenance. The prices of basic necessities are skyrocketing. The things of even basic needs are getting very costly these days and it is difficult to make both ends meet. The medical needs are also involve a lot of expenditure. A wife, who as per law is entitled to same standard as her husband. The respondent is a Non Resident Indian expected to be leading good life having all the necessary amenities. The enhancement in the maintenance allowance is certainly called for but the trial Court gave

more than what was asked by the applicant. There is no justifiable reason for the same. As such, the allowance granted by the trial Court @ Rs.10,000/- per month is reduced to Rs.7,000/- per month in terms of the prayer made by applicant herself.

The next thing to be seen is that while issuing notice in the application for staying of the operation of the impugned order, this Court had directed the petitioner to deposit a sum of Rs.3 lakhs in the registry of this Court, which he has done and that amount has been released to the respondent.

Therefore, in view of the detailed discussion above, the revision petition is partly allowed. The order passed by District Judge(Family Court), Barnala is modified and the monthly maintenance allowance granted @ Rs.10,000/- per month is reduced to Rs.7,000/- per month payable from the date of filing of the application. However, Rs.3 lakhs paid by the petitioner to respondent in terms of direction issued by this Court would be adjusted towards arrears of maintenance allowance, if any or towards future maintenance as the case may be.

26.9.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No