

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

CRR No.2125 of 2017 (O&M)
Date of Decision: October 1, 2018

Sudarshan Chawla

...Petitioner

Versus

Mamta Rani and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Deepam Raghava, Advocate
for the petitioner.

Mr. Sanjiv Gupta, Advocate
for the respondents.

JAISHREE THAKUR, J.

1. The petitioner herein seeks to challenge order dated 27.03.2017 passed by Additional Sessions Judge, Sirsa, by which the appeal filed by the petitioner was dismissed upholding the order dated 27.09.2016 passed by the Judicial Magistrate Ist Class, Sirsa allowing interim maintenance to the respondents.

2. In brief, the facts are that a marriage between petitioner and respondent No.1 was solemnized on 17.02.1990, out of which wedlock three children were born. A dispute arose between them, which led respondent No.1-Mamta Rani, filing a petition under Sections 12, 17, 18, 19, 20, 21, 22, 23 of the Protection of Women from Domestic Violence Act (for short 'the DV Act'). Respondent No.1 also preferred a divorce petition

under Section 13 of the Hindu Marriage Act against the petitioner Sudarshan Chawla on 13.07.2016 before the District Judge, Family Court, Sirsa, which is pending. She also got FIR No.703 dated 20.09.2016 registered under Section 323, 325, 498-A, 406, 506 of Indian Penal Code at Police Station City Sirsa, which was cancelled by the police. In proceedings under the DV Act, the Judicial Magistrate Ist Class, Sirsa passed the order dated 27.09.2016 allowing interim maintenance of ₹ 15,000/- per month to the respondent. Aggrieved against the said order, both petitioner-Sudarshan Chawla as well as respondent-Mamta Rani preferred their separate appeals which stood dismissed. Aggrieved, the instant petition has been filed seeking reduction of maintenance awarded.

3. Learned counsel appearing on behalf of the petitioner herein contends that the present petitioner is earning only ₹ 8000/- per month by running a small electricity shop and that he is living in a rented accommodation at Sirsa by paying a monthly rent of ₹ 3000/- per month. It is argued that carry home earning of the petitioner herein is around ₹ 5000/- which is not sufficient for his own expenses. Apart from arguing that respondent No.2 is highly qualified and she has a Ph.D. degree, it is submitted that she is giving tuition upto 10 + 2 standard students and earning approximately ₹ 15,000/- per month. It is also argued that the petitioner's son namely Rajat (major) has done a diploma in software mobile repair and earning handsomely. It is also submitted that there is no proof available on the record, which would reflect that the petitioner herein has sufficient means to pay the amount so assessed or that he is earning ₹ 70,000/- per month by doing business of electronics or is in the business of

finance.

4. Per contra, learned counsel appearing on behalf of the respondents claims that the petitioner is doing the business of electronics in Shop No.10, Nehru Park, Sirsa and earning approximately ₹ 70,000/- per month. It is also argued that both the daughters are also doing higher studies and they require special care and expenses for their betterment and future.

5. I have heard learned counsel for the parties and with their able assistance, perused the pleadings of the case.

6. Admittedly, a marriage was solemnized between the petitioner and respondent No.1, however, on account of matrimonial differences, various litigation ensued between them. The Family court by an order dated 27.09.2016 allowed interim maintenance @ ₹ 15,000/- per month to her, while placing reliance upon a photocopy of the compromise wherein, the respondent had agreed to pay a sum of ₹ 6000/- to his wife and had also undertaken to bear the daily routine expenses. After taking note of the fact that the respondent is running an electricity shop, interim maintenance of ₹ 15,000/- per month was allowed.

7. The main thrust of argument as raised by the learned counsel for the respondent is that a compromise has been arrived at between the parties whereby, it is agreed that he would pay a sum of ₹ 6000/- per month and other expenses to the respondent and the said compromise has been relied upon by both the courts below. Learned counsel for the petitioner has urged that this was a compromise that has been arrived at during the time, the parties were residing together and currently, the petitioner herein

has been ousted from the matrimonial home, in which the respondent and the children are residing and thus, he has been forced to take premises on rent and is paying rent @ ₹ 3000/- per month.

8. There is no doubt that under the DV Act, the respondent is entitled to claim injunction prohibiting the acts of domestic violence, restraint order as regard to her dispossession, monetary relief etc. but the same has also to be assessed keeping in view the paying capacity and earning of the husband. In the instant case, interim maintenance has been allowed, holding the petitioner liable to pay ₹ 15,000/- on the basis of a compromise, in which the petitioner had already agreed to pay ₹ 6000/- per month plus daily expenses as well as electricity charges. The argument raised that the petitioner was residing out of the matrimonial home and paying a rent of ₹ 3000/- per month is an argument not sustainable. A bare reading of the compromise arrived at on 01.08.2014 before Dy. SP Headquarters, Sirsa in a complaint filed by the respondent, reflects that the petitioner had undertaken to pay the respondent ₹ 6000/- per month apart from her mobile bill, ration and daily expenses. This was a commitment made by him on the basis of the finances available with him and while residing in the house. If the petitioner has moved out and is now staying separately he would still be liable to pay towards the commitment made, till such time there is an authoritative pronouncement by the courts below.

9. In view of the above, no ground is made out to interfere with the orders so passed by both the courts below. Accordingly, the criminal revision in hand is hereby dismissed. However, before parting with this order, it is made clear that any observations made herein are limited for the

purpose of this criminal revision and should not be construed on the merits of the case. The final maintenance is to be assessed on the basis of the evidence led and the documents proved on record and if any excess payment is found to be made under the interim orders, the same would be adjusted from the final maintenance awarded.

October 1, 2018
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No