

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

**CRM-M-4095-2017 (O&M)
Date of Decision: 10.09.2018**

Baldev Raj

....Petitioner

Versus

Santosh Kumari @ Santosh Rani

....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. A.S. Manaise, Advocate
for the petitioner(s).

Mr. A.P.S. Rehan, Advocate
for the respondent.

ANITA CHAUDHRY, J

CRM-38707-2017

Application is allowed as prayed for and Annexure P-5 is taken
on record.

CRM-M-4095-2017

Petitioner has assailed order dated 04.10.2017 vide which
Additional Sessions Judge, Gurdaspur had allowed maintenance of
Rs.9000/- per month to the respondent.

I have heard both the sides.

Counsel for the petitioner contends that the respondent had
filed a petition under Section 125 Cr.P.C. seeking maintenance and it was
second marriage for both of them and the respondent had a son from the

earlier marriage and their marriage was performed in June, 2007 and 6 years later the petition under Section 125 Cr.P.C. was filed. Counsel for the petitioner contends that the respondent is in possession of the house purchased by the husband and it was the petitioner who had to move out of the house along with his daughters and live in the village as the respondent was ill-treating his daughters. Counsel contends that the petitioner had constructed the house and had shifted to Gurdaspur for better education of the children. The counsel further states that the petitioner is working as a Chowkidar in PWD Department and he had taken loan from the Bank to purchase the property and noticing all the facts, the trial Court had dismissed the application. Counsel further states that the respondent filed a revision petition and the copy of the revision is available and they have also placed on record the affidavit filed by her before the Court below, wherein she had given an affidavit as well as a statement that she did not own any movable or immovable property. Counsel further submits that the Revisional Court has wrongly assumed his income as Rs.40,000/- and had awarded Rs.9,000/- per month as maintenance. Counsel further submits that his daughters are college going and his net salary in July 2014 was a little over Rs.13,000/- and he cannot pay the maintenance awarded by the Revisional Court. The counsel further submits that the respondent was not entitled to any maintenance as she was at fault and no FIR had been registered against the husband. Counsel refers to the salary certificate placed on record and to the statement made by Ravinder Kumar AW-2. The counsel submits that in July, 2014 the net salary was Rs.13,370/-.

On the other hand, the submission is that the house at Gurdaspur is owned by the respondent and she had paid the sale consideration and the petitioner has been unable to bring any evidence to show that he had taken a loan.

Counsel for the petitioner in response refers to the affidavit given by the petitioner as well as to the pleadings and has invited my attention to the copy of the revision wherein the respondent had stated that she did not own any movable or immovable property.

The trial Court had gone through the evidence and gave a finding that the amount of sale consideration for purchase of the house in Gurdaspur was by the husband as the wife could not show that she had any funds with her at the time of the purchase. This finding has not been set aside by the Revisional Court nor could have been as all along the respondent had been claiming that she did not own any movable or immovable property. Had she purchased the property, she would not have given the affidavit.

Coming now to the quantum, the evidence produced by the petitioner shows the net salary in July, 2014 to be Rs.13,370. The petitioner has to look after his two daughters who are unmarried. He has to make some expenses upon himself. The Revisional Court assumed the income as Rs.40,000/- per month without any basis and allowed Rs.9000/- per month. Admittedly, it is the second marriage. The respondent has a son from the first marriage. The respondent is living in the house owned by the petitioner, therefore, considering all the circumstances, I am of the view that the amount allowed was on the higher side and the respondent was entitled

to Rs.2,000/- per month considering the other responsibilities and the income of the petitioner which was around Rs.13,000/- per month.

The order passed by the Revisional Court is modified. The maintenance is reduced to Rs.2,000/- per month. The petition is partly allowed.

September 10, 2018

ps-I

**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No