

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

Crl. Revision No. 4723 of 2017 (O&M)
Date of decision: September 25, 2018

Chuhar Singh

...Petitioner

Versus

Neelam and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sanjiv Gupta, Advocate,
for the petitioner.

Mr. Vivek Goyal, Advocate,
for respondent No.1.

JAISHREE THAKUR, J.

1. Challenge in the present revision petition is to order dated 17.11.2017 passed by Additional Sessions Judge, Kurukshetra, modifying order of the Judicial Magistrate 1st Class, Kurukshetra, enhancing the amount of maintenance payable to the respondent no 2 herein.

2. In brief, the facts as stated are that respondent No. 1 preferred an application under Section 125 of the Code of Criminal Procedure (“**the Cr.P.C.**” for short) for maintenance for herself and the minor child. It was contended that a marriage was solemnised with the petitioner Chuhar Singh, out of which wedlock one male child was born on 05.06.2011. However, on account of matrimonial dispute various litigation ensued between the parties, one of them being an application under Section 125 Cr.P.C. It was

maintain herself and her minor child even though she was employed as a JBT teacher in Haryana. She had purchased a house, after taking loan and was paying ₹20,000/- per month as installment and after deducting GPF etc she had meager resources available for her livelihood and for that of the minor child. It was contended that the minor child was studying in Saint Thomas School which is an English medium school and she had to spend more than ₹ 5000/- per month on school fee tuition, books etc., apart from the fact that her son remained ill and was suffering from chronic diseases. It was contended that the respondent-petitioner herein was a man of considerable means and was having 10 acres of agricultural land. Apart from land he also owned several other properties and was maintaining a big house and leading a luxurious life.

The application was contested, while submitting that the complainant was earning more than ₹60,000/- per month as salary from the government, and apart from her salary she was earning ₹20,000/- per month from tuition work. The JMIC by order dated 17.08.2017 allowed maintenance to the minor child at the rate of ₹7000/- per month from the date of the decision of the application, which order was challenged by the complainant and the amount of maintenance was enhanced to ₹ 20,000/- per month for the minor. In the revision, it was noticed that the petitioner herein had approached this Court to grant him anticipatory bail in proceedings that had been initiated under the FIR and in those proceedings he had given an undertaking to pay an amount of ₹ 20,000/- per month till the issue of grant of maintenance is decided. This Court, while confirming the anticipatory bail on 07.04.2015, took into account the undertaking given. Based on this

undertaking the maintenance amount was enhanced from the ₹7000/- per month to ₹20,000/- per month to the minor child. Aggrieved against this enhancement, the instant revision has been filed.

3. Mr. Sanjiv Gupta, learned counsel appearing on behalf of the petitioner—husband, contends that without there being any evidence on the record to substantiate the income of the petitioner, maintenance has been fixed at ₹20,000/- per month, whereas there is no infirmity in the order of the JMIC. It is contended that the minor child is only 7 years old and at the present moment the amount of maintenance at the rate of ₹20,000/- per month appears to be in the higher side. It is also argued that the undertaking that is given in this Court was to the effect that ₹20,000/- per month would be given to the minor child, till such time as the maintenance issue pending before the courts below is not decided, and once interim maintenance is allowed by the trial court, the said undertaking cannot be relied upon to enhance maintenance. It is also argued that the liability of maintaining the child is equally on both parents and the respondent complainant is earning more than adequately as a JBT teacher, apart from giving tuition. It is also contended that the complainant

4. Per contra, Mr. Vivek Goyal, counsel appearing on behalf of the respondent complainant and the minor child argue that the petitioner herein is bound by the undertaking given in court in which he had clearly stated that he would pay maintenance at the rate of ₹20,000/- per month till the question of maintenance is not settled. Apart from that, he is in arrears of maintenance.

5. I have heard the counsel for the parties and with their assistance

have also perused the pleadings of the case.

6. The marriage between the parties is not disputed, nor is the birth of a child who is a minor. The consideration before this court at the present moment is, whether the Additional Sessions Judge has erred in allowing enhanced maintenance to the minor child from ₹7000/- per month to ₹20,000/- per month based upon the undertaking given in court.

7. In order to understand the controversy, the undertaking given by the petitioner on 7.4.2014 in the CRM-M-25099 of 2014 in FIR No 262 dated 9.7.2014 u/s 323/494/495/498-A/506 Indian Penal Code registered at Police Station Sadar Thaneshwar, District Kurukshetra needs to be referred to. The order passed is “*Learned counsel for the petitioner also urged that to show his bona fides the petitioner is prepared and undertakes to pay the maintenance for the child @ Rs. 20,000/- per month for the past one year and also would keep on paying the future maintenance @ Rs. 20,000 per month, till the issue of grant of maintenance, is decided in appropriate proceedings.*”

8. A clear and unambiguous reading of the said undertaking given in court at the time of securing his anticipatory bail, reflects that maintenance to the minor child would continue to be paid at the rate of ₹20,000/- per month till such time as the issue of grant of maintenance, is not decided. No doubt the issue regarding maintenance payable to the respondent and minor child is pending consideration before the trial court and has not attained finality. Evidence is yet to be led. The final maintenance has to be allowed to the respondents based on the evidence produced by both the parties. The contention of the petitioner herein that the

respondent No. 1 has more than adequate source of means to support herself, cannot be taken into consideration at the present moment, since it is the quantum of interim maintenance awarded to the minor child that is in question. The petitioner willingly gave an undertaking to pay the said amount till the matter stands '*decided in appropriate proceedings*'. The terms 'decided' connotes a finality. As per the Oxford English Dictionary the word 'Decide' has been described as to '*Come or bring to a resolution in the mind as a result of consideration.*'. As noticed above, there is no final resolution to the quantum of maintenance that has to be given to the minor child or even the complainant herein, which resolution would be a result of consideration based on the evidence adduced. In such a situation this court finds no infirmity in the order so passed by the Additional Sessions Judge, Kurukshetra, holding the petitioner liable to pay maintenance as per the undertaking given in this Court till the issue is decided.

9. Therefore, finding no infirmity in the order of the Additional Sessions Judge Kurukshetra, the above noted revision petition is dismissed. However, while disposing of this petition, it is made clear that maintenance has to be assessed after the evidence is adduced and appreciated by the trial court and any excess of maintenance awarded would be subject to adjustment.

September 25, 2018
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
 Whether reportable

Yes
 No