

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

CRR(F) No. 1 of 2017

DATE OF DECISION :- September 04, 2018

Smt. Moni Jain and another

...Petitioners

Versus

Sh. Raja Ram

...Respondent

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

Present:- Mr. Rupesh Kumar, Advocate for the petitioners.

Mr. Vijender Bhardwaj, Advocate for the respondent.

This Revision petition is directed against the order dated 6.10.2016 passed by District and Sessions Judge, Family Court, Sonipat vide which he had declined to grant interim maintenance to petitioner Smt. Moni Jain though granting interim maintenance at the rate of Rs.3,000/- per month to Baby Avni minor daughter of the parties residing with petitioner no. 1 in proceedings under Section 125 Cr.P.C. filed by Smt. Moni Jain wife and baby Avni, minor daughter of respondent Raja Ram against him. The petitioners pray that the revision petition be accepted and interim maintenance at the rate of Rs.20,000/- per month be granted to both the petitioners payable by the respondent.

Briefly stated the facts of the case as per version of the petitioners are that petitioner no. 1 Moni Jain was married with respondent Raja Ram on 8.9.1997 in Arya Samaj Mandir, Gaziabad, Uttar Pradesh. After the marriage

the spouses started residing together. The marriage was consummated and the couple was blessed with master Aryan a son on 30.10.1998, baby Avni, a daughter on 16.12.2004. In the petition under Section 125 Cr.P.C. the petitioners have contended that parents of petitioner Moni Jain had not given their consent to such marriage and an F.I.R. No. 635 dated 10.9.1997 under Sections 363 and 366 IPC was got registered against the respondent; that respondent had concealed his actual age from Moni Jain and as a matter of fact he was 15 years older to her. After the marriage the spouses could not lead a happy marital life. Petitioner no. 1 was harassed and maltreated by the respondent and his family members in connection with demand of dowry. She was compelled to make physical relations with one Jai Pal and when she refused she was given beatings. The respondent levelled false allegations against moral character of petitioner no. 1 and respondent refused to maintain the petitioners. Petitioner no. 1 in order to be self reliant completed L.L.B. Degree in the year 2012 thereafter the parties had shifted to Kurukshetra and on 4.3.2014 she was beaten up mercilessly. She was hospitalized where her medical examination took place. Again she was beaten up on 12.3.2014. Ultimately she along with her minor daughter was shown the door on 4.4.2014 after giving beatings to petitioner no. 1. Petitioner no. 1 had submitted a complaint to Superintendent of Police, Sonipat. According to the petitioners they do not have any source of income whereas the respondent is working as UDCA drawing salary of Rs.50,000/- per month in addition to that he is getting Rs.12,000/- as rental income. The petitioners prayed that Rs.30,000/- per month be granted to them as interim maintenance.

On notice the respondent appeared and filed written statement contesting the assertions in the petition though admitting the marriage between

petitioner no. 1 and the respondent and petitioner no.1 giving birth to two children from loins of respondent. According to the respondent, petitioner no. 1 is more educated than him. She is a practising Advocate and a member of District Bar Association, Kurukshetra; that she taking advantage of her own wrongs had left the matrimonial home of her own along with respondent no. 2; that she has levelled allegations against the respondent to extort money. As a matter of fact she had left the matrimonial home on 5.4.2014 and she refused to live with the respondent. She has stated so before various authorities; that petitioner no. 1 is not entitled to claim any maintenance as she is leading adulterous life having extra marital affairs with Vivek and Pardeep as such the present petition is liable to be dismissed under Section 125 (4) Cr.P.C. Respondent has contended that marriage between him and petitioner no. 1 was culmination of a love affair which lasted for 3-4 years. The respondent denied that he or his family members ever harassed, maltreated petitioner no.1 or raised demand of dowry from her or for that matter gave beatings to her; that petitioner no. 1 had introduced one Jai Pal, aged about 90 years who due to his old age had been thrown out of house by his family members. To save his life at request of petitioner no. 1 respondent provided him food and other necessary things. Said Jai Pal lived with them but he suddenly left their home. Petitioner no. 1 was having extra marital relations with Vivek and Pardeep. Though she claimed that they were her god brothers; that petitioner no. 1 was caught red handed with her paramours by respondent in the year 2005 but to protect her paramour hide her extra marital relations; the petitioner no. 1 levelled false allegations against the respondent and also filed the present petition based on concocted facts. Respondent further pleaded that petitioner no. 1 had confessed her extra marital affairs in writing and wrote a letter to respondent in her

handwriting. Petitioner no. 1 had given assurance that she she would not make relations with paramours in future. Respondent admitted that he is in Union Government service though denying that he is getting Rs.50,000/- per month. According to him, he never refused to maintain the petitioners. The respondent prayed for dismissal of the petition and for declining of request by the petitioners for grant of interim maintenance.

Learned trial Court disposed of the application vide impugned order. The operative part of which is being reflected as under :-

“6. I have given my anxious consideration to the rival contentions of the learned counsel for the parties besides going through the case file and authorities relied upon by the learned counsel for the parties carefully.

A bare reading of Section 125 Cr.P.C. reveals that the Court may, during the pendency of proceedings regarding monthly allowance for the maintenance under this Section, order the respondent to make a monthly allowance for the interim maintenance of his wife or such child, and to pay the same to such person as the Court may from time to time direct. Section 125 Cr.P.C. does not say that in every petition under Section 125 Cr.P.C. passing of an order for interim maintenance is sine qua non. It has come on record that petitioner no. 1 is a practicing Advocate. She has got herself enrolled as a member of District Bar Association, Kurukshetra. She along with her minor daughter has been living separately from the respondent and her minor son who is studying. This Court had made sincere efforts for reconciliation and on 29.7.2016 a joint statement of the parties was recorded in this behalf, in which, the parties agreed to live together at Sonipat but petitioner no. 1 did not honour the said statement and instead on 20.8.2016 she made a statement that she did not want to live with the respondent without interim maintenance and if the respondent

continued to give her interim maintenance for a period of one year, she would decide to live with him. It is worth mentioning here that the minor school going son of the parties resides with the respondent. Petitioner no. 1 has not moved any petition for his custody. She has refused to live with her husband and son with the excuse that she would think to live with her husband if he continued to pay interim maintenance to her for a period of one year. To my mind the said statement has been made by petitioner no. 1 as she does not want to live with the respondent and her minor son. The allegations of the respondent are that petitioner no. 1 has deserted him in order to continue with her adulterous behaviour as she is maintaining her illicit relations with one Pardeep and Vivek. The respondent has produced on record the transcript of conversation between him and petitioner no. 1 in this behalf. He has also produced on record copy of order passed by learned Chief Judicial Magistrate, Kurukshetra, whereby aforesaid Pardeep and Vivek have been summoned to face trial under section 497 of IPC for maintaining illicit relations with petitioner no. 1. It is also doubtful as to whether petitioner no. 1 resides at the address given by her in the petition under Section 125 Cr.P.C. In the facts and circumstances of the present case, I do not deem it fit to grant interim maintenance allowance to petitioner no. 1. However, keeping in view the fact that the respondent has the responsibility to maintain his aged mother and a grown up son who is school going. I order him to pay a sum of Rs.3,000/- per month as interim maintenance allowance to petitioner no. 2 from the date of filing of the application for interim maintenance i.e. 1.6.2015. The application for interim maintenance is disposed of accordingly.”

Feeling aggrieved the petitioners have filed the present revision petition.

At the very outset it may be stated that the revisional jurisdiction

of this Court is quite limited. This Court is to interfere with the order passed by the Court below while exercising revisional jurisdiction only if there is any illegality or infirmity in the order which is writ large on the face of it and if the order is perverse having been passed against settled principles of criminal jurisdiction, this is unlike appellate jurisdiction which is quite wide where the appellate Court can reappraise the evidence and record so as to find out as to whether the order passed by the Court below was correct or not.

In the instant case the trial court has declined the request of petitioner no. 1 for interim maintenance for the reason that she is a practising Advocate and a member of District Bar Association, Kurukshetra. It being so she can be expected to make both ends meet for herself. Another factor which had been taken note of by the trial Court is that initially the parties agreed to live together at Sonipat but petitioner no. 1 had not honoured the said settlement rather on 20.8.2016 she made a statement that she did want to live with the respondent without interim maintenance and if the respondent continued to give her interim maintenance for a period of one year then she would decide to live with him. According to the trial Court such act and conduct of petitioner no. 1 showed that she did not want to live with her husband and minor son. The trial Court has taken note of transcription of the conversation between him and petitioner no. 1 and copy of order passed by Chief Judicial Magistrate, Kurukshetra vide which Pardeep and Vivek had been summoned to face trial under Section 497 IPC for maintaining illicit relations with petitioner no. 1. While considering the allegations levelled by respondent that petitioner no. 1 is having illicit relations with Pardeep and Vivek, it has also been found doubtful as to whether petitioner no. 1 is residing at the address given by her in the petition under Section 125 Cr.P.C.. As a

cumulative effect of all those factors, the trial Court came to the conclusion that petitioner no. 1 is not entitled to the interim maintenance. While granting interim maintenance to petitioner no. 2 baby Avni at the rate of Rs.3,000/- per month the factors like the income of the respondent, the requirements of petitioner no. 2 and liability of respondent towards other family members including minor son of the parties have been taken into consideration.

The petitioners are feeling aggrieved by the impugned order. During the trial of this case, petitioner no. 1 by leading cogent and convincing evidence may be able to prove case of petitioners and that the allegations levelled against her moral character by respondent are wrong and erroneous as such she is entitled to get maintenance. But as the things stand, no fault can be found with the impugned order warranting its setting aside. Further more the petitioners have got remedy under Section 127 Cr.P.C. to approach the trial Court for alteration in the allowance citing change in circumstances.

The order under challenge does not call for any interference. The revision petition in that regard stands dismissed.

(H.S. MADAAN)
JUDGE

September 04, 2018

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No