

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

CRR(F) No. 249 of 2017

DATE OF DECISION :- August 28, 2018

Santosh Kumar

...Petitioner

Versus

Smt. Bhawna Gupta

...Respondent

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

Present:- Mr. Vivek Khatri, Advocate for the petitioner.

Smt. Bhavna Gupta-respondent in person.

Applicant Bhawna Gupta, Advocate had filed an application under Section 125 Cr.P.C. against her husband Santosh Kumar-respondent, which after contest was allowed and District Judge, Family Court, Hisar vide judgment dated 20.5.2017 granted Rs.12,000/- per month as maintenance to petitioner payable by her husband Santosh Kumar. She was further granted Rs.5500/- as litigation expenses. It was further directed that arrears of maintenance be cleared within three months and future maintenance allowance from the date of order be deposited in the bank account of petitioner by first week of every month and in case of default of payment of arrears or future maintenance allowance, respondent shall be liable to pay an additional sum of Rs.1000/- per month for every month's

default. In case respondent fails to pay the same then petitioner shall have a right to seek that through process of Court.

Feeling aggrieved by the said order Santosh Kumar has filed the present revision petition, notice of which was given to Bhawna Gupta, who had put in appearance.

I have heard learned counsel for the revisionist and Bhawna Gupta-respondent in person besides going through the record.

I do not find any ground to upset the impugned order. The trial Court considering the pleadings of the parties, evidence led by them as well as other facts and circumstances including the status of the parties and income of the husband, has awarded maintenance at the rate of Rs.12,000/- per month.

Keeping in view the social and financial status of the husband the wife is also entitled to that living standard and in this time of high prices the sum of Rs.12,000/- per month cannot be said to be on the higher side.

Learned counsel for the petitioner has argued that Bhawna Gupta is a practicing Advocate having handsome income from her profession, as such she is not entitled to claim maintenance. In support of his contention he has referred to authority 'Monu Songra versus Pinki 2016 (4) R.C.R (Criminal) 804' by a coordinate Bench of this Court wherein it was observed that the Court shall have to determine whether a qualified woman who can get a job can sit idle and insist on maintenance since everyone has to earn for himself or herself or at least make an effort and would not sit idle.

Of course, there cannot be any dispute with this proposition of

law. Respondent wife is admittedly a practising Advocate at District Courts Hisar. However, the crucial question to be seen is whether she can earn enough from the legal practice so as to meet her basic expenses. It was for respondent to prove that fact by leading evidence to show whether she is an income tax assessee filing income tax returns regularly, if so how much is her annual income, the number of cases in which she has been engaged and fees received by her. However, no such evidence has been produced. Bhawna Gupta being a practising Advocate at District level in Haryana does not go to show that she has a flourishing practice and is earning handsome professional income from enough to meet her needs. It is not a case of professionally qualified woman sitting idle and not doing any job. In case of a professionally qualified woman doing a job she can be expected to have a fixed monthly income. But in case of a practising lawyer, no fixed monthly income can be expected or assessed. Therefore, this authority does not help the revisionist.

Section 127 Cr.P.C. deals with alteration in allowance. It provides that on proof by a change in circumstances of any person, receiving under Section 125 a monthly allowance for the maintenance or quantum of maintenance or ordered under the same Section to pay a monthly allowance of maintenance or quantum of maintenance to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration as he thinks fit: Provided that if he increases the allowance, the monthly rate of five hundred rupees in the whole shall not be exceeded.

The revisionist has got remedy of approaching the trial Court under that provision seeking modification/alteration of the order granting

maintenance to Bhawna Gupta.

I do not find any merit in the petition, therefore, the same stands dismissed.

(H.S. MADAAN)
JUDGE

August 28, 2018
p.singh

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No