

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

CRR(F)-60-2017

Date of decision: 04.05.2018

Renu and another

...Petitioner

Versus

Karam Chand

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Amit Jaiswal, Advocate,
for the petitioner.

None for the respondent.

JAISHREE THAKUR, J.

1. This is a revision petition that has been filed seeking to challenge order dated 18.10.2016 passed by District Judge (Family Court), Ambala, whereby the respondent has been directed to pay a sum of ₹ 2,000/- per month as maintenance to the petitioners herein.

2. In brief, the facts are that a marriage was solemnized between petitioner No.1 and the respondent on 31.01.2009 according to Hindu rites and ceremonies. Out of this wedlock, petitioner No.2 was born on 18.11.2010. On account of demand of dowry and the inability of petitioner No.1 to fulfill the same, she was turned out from her matrimonial home along with the minor child. As petitioner No.1 was unable to sustain herself and the minor child, she filed a petition under Section 125 Cr.P.C. before the District Judge (Family Court), Ambala claiming maintenance. It was alleged that the respondent is a

Cooler mechanic and is working in a cooler manufacturing company at village Kanwla, District Ambala, from where he is earning more than ₹ 15,000/- per month. The respondent failed to put in appearance and, therefore, was proceeded against ex parte. Petitioner No.1 led her evidence, which was corroborated by her father Des Rash while appearing as PW-2. Thereafter, learned District Judge (Family Court), Ambala held that the income of the respondent to be between ₹ 7,000/- to ₹ 8,000/- per month being that income of a casual labourer and directed that he would pay a sum of ₹ 2,000/- per month as maintenance i.e. ₹ 1,500/- per month to petitioner No.1 and ₹ 5,00/- per month to petitioner No.2. Aggrieved against the said order, the instant revision petition has been filed seeking enhancement in the said amount.

3. Learned counsel appearing on behalf of the petitioner would contend that as on date casual labourer in Haryana is earning approximately ₹ 10,000/- per month and, therefore, the amount of maintenance awarded is insufficient for them to sustain themselves keeping in view that the minor child has yet to be educated and at the moment he is only approximately 8 years old.

4. I have heard learned counsel for the petitioner.

5. The respondent has not put in appearance despite the fact that the service was effected through affixation, as per the office report on 14.07.2017. Therefore, this petition is being heard ex parte. The only question that arises for determination by this Court is that what should be the quantum of maintenance payable to the petitioners herein?

6. Section 125 Cr.P.C has been enacted to ensure that a wife, minor child or old-age parents are maintained and not subjected to vagrancy and destitution. Grant of maintenance to the wife has been perceived as a measure

of social Justice by the courts and the said section falls within the Constitutional sweep of Article 15 (3) reinforced by Article 39 of the Constitution of India. It provides speedy remedy for supply of food clothing shelter to the deserted wife while ensuring that the husband fulfils his moral and legal obligation to support his family be it a minor child, wife or aged parents.

7. Section 125 Cr.P.C. reads as under :-

“125. Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain-(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct: Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month' s allowances remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made: Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due: Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing. Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife' s refusal to live with him.

(4) No Wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.”

8. In the instant case, there is nothing on the record to establish the earnings of the respondent herein. However, since there is nothing to counter the assertion made that he is a Cooler mechanic and is working in a manufacturing factory, at best this Court can take his income to be ₹ 10,000/- per month at par with that of a daily-wager in Haryana.

9. This Court has not been made aware as to what the liability of the respondent would be other than being aware he has a liability to support his wife and the minor child, who has to be educated. In these days of rising prices and higher cost of living, a sum of ₹ 2,000/- per month is held to be on the lower side. In the judgment rendered by the Hon'ble Supreme Court in *Kalyan Dey Chowdhury vs. Rita Dey Chowdhury, 2017(2) R.C.R. (Civil) 1033* it has been held that 25% of husband's net salary is just and proper to be awarded as maintenance to wife. But in that case, it was only the respondent-wife, whereas in the instant case there is a minor child also.

10. Therefore, in view of the aforesaid, maintenance is enhanced from ₹ 2,000/- to ₹ 3,500/- i.e. ₹ 2,500/- per month to petitioner No.1 and ₹ 1,000/- per month to the minor child from the date of filing of the revision petition.

11. Revision petition stands allowed accordingly.

04.05.2018

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes.

Whether reportable

No.