

**CR Nos.5159 & 6193 of 2017 (O&M)**

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

**Date of decision : 14.05.2019**

**1. CR-5159-2017 (O&M)**

Sabri

... Petitioner

Versus

Mohd. Jamil and another

... Respondents

**2. CR-6193-2017 (O&M)**

Gulaksha

... Petitioner

Versus

Zafar Iqbal and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Sunny K. Singla, Advocate  
for the petitioner.

Mr. Saqib Ali Khan, Advocate  
for the respondent(s).

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**AMIT RAWAL, J. (ORAL)**

This order of mine shall dispose of two revision petitions bearing **CR No.5159 of 2017** titled as **“Sabri V/s Mohd. Jamil and another”** and **CR No.6193 of 2017** titled as **“Gulaksha V/s Zafar Iqbal and others”**, as identical question of fact and law is involved.

The point, which arises for determination, is whether the Muslim woman is entitled to maintenance *pendente lite*, in a petition filed

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for restitution of conjugal rights.

Concededly, the parties to the *lis* are governed by religion and Muslim customs.

In both the cases, the husband filed the suit for restitution of conjugal rights, on the allegations made therein, wherein the petitioner-wife filed an application for grant of maintenance *pendente lite*. The trial Court after contest, dismissed the application, on the ground that there is no provision in the Muslim Law or any statute governing them, for grant of interim maintenance.

Mr. Sunny K. Singla, learned counsel appearing on behalf of the petitioner, relies upon the judgment of Allahabad High Court rendered in **“Samaun Khan V/s Smt. Roshni Parveen” 2010 (35) RCR (Civil) 733**, which protects the right of every citizen of India for granting the maintenance *pendente lite* as well as judgment of Bombay High Court in **“Tabassum Shaikh V/s Shaikh S. J. Shaikh, 2000(1) HLR 520** and Karnataka High Court in **“H. Sirajuddin V/s Shaziya alias Afsana and another” 2003 AIR (Karnataka) 224**.

On the other hand, learned counsel for the respondent(s) relies upon judgment of Bombay High Court (Nagpur Bench) in **“Shabbir Ahmed Sheikh V/s Shakilabanu” 1985 (2) HLR 180**, dis-entitling the Muslim woman to maintenance *pendente lite* under the provisions of Section 125 of the Code of Criminal Procedure and Section 24 of the Hindu Marriage Act.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Singla, for, the *ratio decidendi* culled out by Allahabad High Court was based upon analogy drawn from the Protection of Women from Domestic

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Violence Act, 2005, which is applicable to all the women, irrespective of the caste and religion, but considered the provisions of Article 21 of the Constitution of India i.e. Right to Life and Right to Livelihood as fundamental rights. For the sake of brevity, para Nos.28 and 29 of the judgment reads as under:-ezu

*"28. Apart from above, there is one another aspect of the matter. Right to life and the right to livelihood are fundamental rights guaranteed under Article 21 of the Constitution of India as settled by Hon'ble Supreme Court in Catena of judgments.*

*The meaning of the word "LIFE" interpreted by Hon'ble Supreme Court from time to time. In Kharak Singh Vs. State of U.P., AIR 1963 SC 1295: 1964 (1) SCR 332, it was held that the term "life indicates more than mere animal existence. [See also : State of Maharashtra VS. Chandrabhan Tale, AIR 1983 SC 803 : 1983 (3) SCR 337: (1983) 3 SCC 387]. The inhibitions contained in Art. 21 against its deprivation extends even to those faculties by which life is enjoyed. In Bandhua Mukti Morcha Vs. U.O.I., AIR 1984 SC 802: 1984 (2) SCR 67: 1984 (3) SCC 161, it was held that the right to life under Article 21 means the right to live with dignity, free from exploitation.*

*In case, the wife is suffering from paucity of funds or is unable to maintain herself or she has got no sufficient means for livelihood, then, the court, in a pending suit for restitution of conjugal rights, has got ample powers to direct for payment of maintenance in pursuance to the powers conferred by Section 151 of the Code of Civil Procedure. Needless to say that right to life and livelihood does not mean animal living but a quality of life suiting to the status of the person concern.*

*29. Analogy may also be drawn from the Protection of Women from Domestic Violence Act, 2005 where the Parliament to its wisdom, deals with the situation with regard to plight of*

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*women without differentiating on the basis of caste, creed or religion. The statutory protection granted by Parliament is to meet out the requirement of Article 21 of the Constitution of India. Accordingly, even if there is no statutory provision, temporary injunction may be granted or an order may be passed by the Family Court for the payment of maintenance including cost of litigation without discriminating the ladies of the country on the basis of caste, creed or religion.”*

In **H. Sirajuddin's case** (supra) and **Tabassum Shaikh's case** (supra), it has been held as under:-

“Para Nos.4 and 5 of **H. Sirajuddin's case**

*4. The principal submission canvassed by the learned counsel for the petitioner is that, I. A. II filed by the respondents before the trial Court is not maintainable on the ground that the respondent No. 1 has filed the suit for restitution of conjugal rights and there is no provision under the Mohammedan Law to file such a suit. Therefore once the suit filed is not maintainable, the question of considering I. A. U for maintenance is not at all sustainable. This aspect of the matter is not at all considered by the trial Court, as such the order is liable to be set aside. Further he submitted that during the course of argument that the petitioner has divorced the 1st respondent and the question of maintaining her does not arise and trial court has not at all taken into consideration this aspect of the matter and awarded maintenance at the rate 500/- each without any basis. Further he has submitted that once the 1st respondent had been divorced, the question of giving maintenance by the petitioner does not arise and there is no provision in the Mohammedan Law, as such the application is not maintainable and it is liable to be dismissed.*

*5. I have carefully perused the impugned order passed in I. A. II I do not find any error of law in the order passed by the trial court in awarding maintenance at the rate of ₹500/- each to the*

*respondents 1 & 2. Regarding the principal submission made by the petitioner's counsel that the application filed by the 1st respondent is not maintainable has no substance and the said submission is to be rejected at threshold in view of the well settled principles of law laid down by the Constitutional Bench of the Apex court in the case of [Daniel Lathif v. Union of India](#) : AIR 2001 Supreme Court 3958), wherein the Constitutional Bench held that the Muslim Husband is liable to make reasonable provision for the future of the divorced wife which obviously includes her maintenance. Further it is declared that the divorced Muslim woman if not remarried to maintain herself after the iddath period she can seek maintenance from the husband. Therefore, if the law laid down by the Constitutional Bench of the Apex Court is taken into consideration, I am of the view that the application filed by the 1st respondent for maintenance is maintainable. Therefore, the submission of the petitioner's counsel that the application is not maintainable is rejected."*

**Para Nos.8 and 9 of *Tabassum Shaikh's case***

*"8. I have noticed in detail the pleadings of the parties in order to come to a tentative/ prima facie conclusion as to whether or not the wife was justified in leaving the matrimonial home. She has specifically pleaded allegations of cruelty. She has also specifically pleaded the allegations of unchastity which had been made against her. She has categorically stated that on one occasion the mother of Defendant almost split the ear lobe of the wife whilst trying to remove one of the ear rings from her ear. Although all these facts are sought to be denied, yet at this stage it is the word of the plaintiff against the word of the defendant. I am prima facie of the view that the plaintiff is justified in living away from the matrimonial home.*

*9. This now leaves only the question of quantum of maintenance which is to be fixed. The plaintiff has given details of the properties and business activities of the*

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*Defendant. She has also given the details of the business which is being run by the family. It is not disputed by the defendant that he is part and parcel of a joint family. It is also not disputed that he is married for the second time. Therefore, to say that he has no independent income to provide for maintenance of the plaintiff cannot be accepted. Once the details of the properties and the business had been specifically mentioned in the petition, it was for the defendant to disclose the income. He has chosen not to give any details of the income. He merely states that he is only helping in the business, of his parents. When the plaintiff had made allegations that the parents of the defendant were constantly demanding dowry, it was stated by the Counsel for the defendant that the family is well off and, therefore, there is no need to make any demands for dowry. Yet, on the other hand in reply to the plea for maintenance it is stated by the defendant that he has no independent income. In my view, the plaintiff has made out a prima facie case for interim maintenance. The Defendant is directed to pay maintenance to the plaintiff in the sum of ₹2,500/- per month from the date of the application. The defendant is directed to deposit the arrears of maintenance within a period of six weeks from today. Monthly maintenance to be paid on or before 7th of each month.*

*For the reasons stated above, I am also satisfied that the Defendant and his family members have to be restrained from threatening, abusing or accosting the plaintiff and her family members. Notice of Motion is also made absolute in terms of prayer Clause (a). Prayer Clause (a) reads as under :*

*"(a) Pending the hearing and final disposal of the suit for order of injunction restraining the Defendant, his servants and agents from coming to, or entering upon the plaintiffs parents residence at Buddhan ki Chawl, Id-gah maidan, Prem Nagar, Jogeshwar (E) or shouting or abusing or threatening the Plaintiff or her parents and/*

*or accosting the Plaintiff or her parents anywhere in the street."*

*Notice of Motion disposed of in the above terms."*

The aforementioned view of mine is only qua the maintainability of the application and not on the amount of the maintenance, which will be the domain of the trial Court.

Keeping in view the aforementioned facts, the impugned order, under challenge, is set aside, holding the application to be maintainable. The trial Court shall decide the application for maintenance *pendente lite* as expeditiously as possible.

Resultantly, the revision petitions stand disposed of.

14.05.2019  
Yogesh Sharma

( AMIT RAWAL )  
JUDGE

✓  
Whether speaking/reasoned Yes/ No  
✓  
Whether Reportable Yes/ No