

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

CRM-M-3046 of 2019.

Decided on:- January 23, 2019.

Dr. Subhash Chauhan.

.....Petitioner.

Versus

State of Haryana and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Sanjay Vashisth, Advocate
for the petitioner.

HARI PAL VERMA, J.

The petitioner has filed present petition under Section 482 Cr.PC for setting aside the order dated 13.12.2017 (Annexure P-6) passed by learned Judicial Magistrate 1st Class, Narnaul, whereby in a petition under Section 125 Cr.PC filed by the respondents No.2 to 5, learned Magistrate has awarded interim maintenance of Rs.40,000/- per month to respondents No.2 to 5.

Challenge has also been laid to the order dated 01.11.2018 (Annexure P-12) passed by learned Additional Sessions Judge, Narnaul, whereby the revision filed by the petitioner against the aforesaid order dated 13.12.2017 passed by learned Magistrate, was dismissed.

As per the petition filed by the respondents under Section 125 Cr.P.C., respondent No.1 was married with the petitioner on 11.07.1999 and after the marriage, three children, namely, Sidhika (daughter), Keshav (son) and Mayank (son) were born out of this wedlock. Thereafter, the matrimonial

discord started between the parties. The respondent-wife has made allegations about the character of the petitioner-husband on the ground that he is having illicit relations with a lady. Since the petitioner is not maintaining the respondent-wife and his children, for their living and education, particularly when the eldest children i.e. daughter Sidhika is pursuing 10+2 medical stream, whereas sons Keshav and Mayank are studying in class VII and III respectively. The respondents-children require expenses for their studies, survival, books, dress and fee etc. in addition to food and daily needs.

During pendency of the petition under Section 125 Cr.P.C., the respondents filed an application for interim maintenance and learned Magistrate vide impugned order dated 13.12.2017, considering the status of the parties and the fact that the petitioner-husband is a medical officer at Government Ayurvedic Dispensary in district Yamuna Nagar and is drawing a salary of Rs.79,591/- per month, whereas the wife is staying with the children at Narnaul, awarded interim maintenance of Rs.40,000/- per month to the respondent-wife and three children.

The aforesaid order dated 13.12.2017 passed by learned Magistrate was challenged by the petitioner before the Court of Session by way of a revision petition. However, learned Additional Sessions Judge, Narnaul has dismissed the said revision vide impugned order dated 01.11.2018. Hence, the present petition has been filed by the petitioner-husband.

Learned counsel for the petitioner has argued that it is admitted case of the respondents that they are residing in two houses i.e. House

Nos. 616-617 (combined 3 storey) EWS, Housing Board Colony, Nasibpur, Narnaul and both houses are owned by the petitioner. Thus, the petitioner has provided sufficient house to live for the respondents. Apart from this, the facility of washing machine, one air conditioner and two geysers has also been provide by the petitioner. The electricity bills amounting to Rs.4,000/- to Rs.5,000/- for two months have also been paid by the petitioner for which he has referred to the receipts of payment of electricity bills as Annexure P-5 (colly). Despite this, the trial Court has awarded higher amount of interim maintenance to the respondents ignoring the fact that the petitioner has already provided the aforesaid facilities to them. While deciding the application for interim maintenance, the trial Court has assessed the salary of the petitioner-husband as Rs.79,591/-and awarded interim maintenance of Rs.40,000/- per month to the respondents ignoring the fact that the petitioner is paying monthly EMI of plot, LIC policy and car loan etc.

He has referred to the insurance policy for an amount of Rs.5 lakh commencing from 27.08.2018, wherein the respondent-wife has been shown as nominee of the petitioner. He has contended that the petitioner has been paying the annual instalments as premium of said policy as Rs.50,000/-. Even on the birthday of the children, the petitioner got all three children one T-shirt each and got Mayank a bicycle on 27.06.2018. He has further argued that in November, 2017, the gross pay of the petitioner was Rs.1,06,627/- per month and after deducting the GPF of Rs.15,000/-, income tax of Rs.21,000/-, the net salary paid to the petitioner is Rs.70,567/- per month. It has also been

argued that the respondent-wife is M.A., B.Ed., M. Phil and has passed CTET examination and as such, she is competent to earn and maintain herself.

I have heard learned counsel for the petitioner.

There is no dispute that the petitioner is working as Ayurvedic Medical Officer and as per the salary slip (Annexure P-11), his gross salary was Rs.1,05,651/- per month and net monthly salary was Rs.79,591/- in the month of July, 2017. Thereafter, his salary must have been increased on account of annual increment in his salary. The argument of learned counsel for the petitioner that he has to pay instalments of car loan and EMI of the plot is of no relevance. In fact, these are the plans of the petitioner and rather, his savings in the long term. Interestingly, the petitioner is earning an amount of Rs.80,000/- per month and out of this, a sum of Rs.40,000/- per month has been awarded by the Courts below as interim maintenance to the respondents, who are the wife and three children of the petitioner. Even one of the respondents Sidhika, who is about 18 years of age is pursuing 10+2 in the medical stream. It is but presumed that enough expenses are required to be incurred on her education more particularly when she is studying in medical stream and must be attending good coaching classes in this competitive era.

Apart from this, the responsibility of respondent-wife is much more than what the petitioner-husband is carrying. Mere financial aid is not sufficient for the respondent-wife to take care of three children, rather she is completely immobilized considering the constitution of the family which include grown-up daughter. The plea of learned counsel for the petitioner that she has been provided a house to live, though is not in dispute, but the said

house No.616-617 is of EWS category and the total area of the same is 40 square yards (20 sq. yards each). In these circumstances, it cannot be said that the interim maintenance awarded to the respondents is on higher side in any manner.

Since the maintenance of Rs.40,000/- per month awarded to the respondents is interim in nature, this Court is not making any observation, but considering the fact that the petitioner is well placed doctor and is Ayurvedic Medical Officer, this Court does not find any illegality in the impugned orders passed by the Courts below.

Accordingly, the present petition, being devoid of any merit, is dismissed.

January 23, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No