

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

**CR No. 5960 of 2018 (O&M)
Date of Decision:-17.12.2019**

Priyanka

...Petitioner

Versus

Vinay Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:- Mr. Dinesh Arora, Advocate
for the petitioner.

Ms. Nivedita Sharma, Advocate,
for the non-applicant/respondent.

RAJ MOHAN SINGH, J.(Oral)

[1] Petitioner is agrieved of order dated 20.07.2018 passed by Principal Judge, Family Court, Rohtak whereby application under Section 24 of Hindu Marriage Act for grant of maintenance in favour of the petitioner was dismissed and the application under Section 26 of Hindu Marriage Act for grant of maintenance in favour of minor child was allowed to the extent of directing the respondent to pay an amount of Rs.2000/- per month as maintenance to the minor daughter.

[2] The petition under Section 13 of Hindu Marriage Act was filed by the respondent for grant of a decree of divorce. In

the said petition, the petitioner-wife filed an application under Section 24 of Hindu Marriage Act on the ground that she has no source of income to maintain herself and to meet the litigation expenses. The petitioner pleaded herself to be pregnant and is living in her matrimonial house at Village Kehandra Wali , Tehsil and District Jhajjar. She has to come to Rohtak from the village in order to appear in the Court proceedings initiated by the respondent-husband. She further claimed that the respondent is a man of means and is working in M/s Aggarwal Movers and Packers, Jamalpur Road near Jamalpur Chowk, Tehsil Patodi, District Gurgaon and his monthly salary is more than Rs.30,000/-. She also pleaded that the respondent-husband is also having movable and immovable properties including two acres of agricultural land in the village besides having a residential house of 450 sq. yards in his name. The income of the husband is claimed to be Rs.40,000/- per month from all sources. Another application under Section 26 of Hindu Marriage Act was filed for the maintenance of minor child.

[3] In reply to the application for maintenance under Section 24 of Hindu Marriage Act, the respondent contested the claim of the petitioner on the ground that she is running a Parlour shop and a Boutique in her parental house at Village Pahrawar and she is a trained professional in this work as she was doing this work before her marriage also. The respondent had to resign

from his job on account of false complaint given by the petitioner and a criminal case under Section 498-A IPC was registered against the respondent. The respondent had to resign in order to keep the future prospects of job alive. At present he is working in a private shop of Spare Parts and earning a meagre amount of Rs.8000/- per month.

[4] In reply to Paras No. 3 and 4 of the application on merits, the following stand was taken by the respondent:-

"3. That the para No.3 of the application is wrong and denied. It is denied that the applicant has no source of income to maintain herself and to meet the litigation expenses. It is denied that she has no movable or immovable properties in her name. She is fully dependent upon the mercy of her parents. It is admitted that she is pregnant and is living in her matrimonial home at village Kehandrawali Tehsil and District Jhajjar. It is denied that the applicant has to come from this village to Rohtak to appear in the Hon'ble Court on each and every date of hearing. It is denied that the applicant has to spend about Rs.1000/- pre hearing on transportation and diet etc. It is denied that the applicant has no source of income, she is unable to maintain herself and to meet litigation expenses.

4. That the para No.4 of the application is wrong and denied. It is denied that the petitioner is a man of means. It is denied that he

is graduated and is serving in M/s Arragwal Movers & Packers, Jamalpur Road near Jamalpur Chowk Tehsil Patodi, District Gurugram. It is denied that the monthly salary of the petitioner is more than Rs.30,000/-. It is denied that he is also a residential house of 450 sq. yards in his name. It is denied that his income from all sources is not less than Rs.40,000/- per month. It is denied that despite having sufficient means, the petitioner has refused to maintain the applicant/respondent. It is denied that the petitioner is legally bound to provide maintenance to the applicant. The contents of the preliminary objections may be read herein."

[5] Perusal of para No.3 would show that the stand taken by the respondent in the context of the petitioner running a Beauty Parlour and a Boutique shop in her parental house at Village Pahrawar has been refuted by the respondent himself by admitting that the petitioner is pregnant and is living in her matrimonial house at Village Kehandra Wali.

[6] In para No.4 of the reply, he has denied the allegations of his income prospects as pleaded by the petitioner. The Principal Judge, Family Court, Rohtak vide the impugned order dated 20.07.2018 dismissed the claim of maintenance of the wife under Section 24 of Hindu Marriage Act and granted an amount of Rs.2000/- per month for the maintenance of minor daughter

from the date of passing of the order. While passing the impugned order, the Principal Judge, Family Court, Rohtak in para No.6 of the order has recorded some findings on merits which in my considered opinion should not have been recorded at this premature stage where both the parties have not led their evidence in the main petition under Section 13 of Hindu Marriage Act.

[7] Admittedly, the respondent-husband was working in private concerned at one point of time and thereafter, he has allegedly resigned from the post under the threat of criminal prosecution by the petitioner-wife. He himself admitted the fact that he is earning presently a salary of Rs.8000/- per month. It is settled principle of law that the wife is also entitled to live as per status of the husband. Maintenance cannot be denied solely on the bald statement that the wife is having earning prospects particularly when the respondent has admitted that she is pregnant and is living in the matrimonial house. The respondent is able-bodied person and earning prospects of the respondent are not in dispute. At this premature stage of litigation, some guess work has to be done while assessing monthly income of the respondent.

[8] Taking into consideration the facts and circumstances of the case, I deem it appropriate to grant maintenance to the petitioner-wife @ Rs.8000/- per month. The award of

maintenance to the tune of Rs.2000/- in favour of minor daughter shall remain the same. However, the maintenance of the child is also ordered to be granted from the date of filing of the application. Since the petition under Section 13 of Hindu Marriage Act, 1955 has been filed by the respondent-husband, therefore, the petitioner-wife is also entitled to litigation expenses to the tune of Rs.15,000/-. The maintenance @ Rs.8000/- per month shall be paid to the petitioner-wife from the date of filing of the application. Arrears, if any, shall be computed by the Principal Judge, Family Court, Rohtak and the same be ordered to be paid to the respondent-wife either on the date fixed or soon thereafter, failing which appropriate order be passed in accordance with law.

[9] Any observation contained in para No.6 of the impugned order shall not be construed to be an opinion of the case on merits.

[10] In view of aforesaid, present revision petition is disposed of.

17.12.2019

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**(Raj Mohan Singh)
Judge**

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No