

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

116+119

CRM-M-6617-2019 (O&M)

Date of Decision:14.05.2019

Aman Mehta

.....Petitioner

Versus

Shruti Mehta

.....Respondent

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

Present: Mr. Bhanu Pratap Singh, Advocate,
for the petitioner.

Mr. Namit Khurana, Advocate,
for the respondent.

HARI PAL VERMA, J.

CRM-15338-2019

Prayer in this application filed under Section 482 Cr.P.C. is for placing on record calculation of outstanding amount of interim maintenance awarded to respondent-wife, Annexure A-1.

Application is allowed, as prayed for. The document (Annexure A-1) is taken on record, subject to all just exceptions.

CRM-M-6617-2019

Petitioner-Aman Mehta has filed the present petition under Section 482 Cr.P.C. for quashing the impugned order dated 15.1.2019 passed by learned Sessions Judge, Yamuna Nagar at Jagadhri whereby the revision petition filed by the respondent-wife was allowed and the order dated 27.10.2017 passed by learned Judicial Magistrate Ist Class, Yamuna

Nagar at Jagadhri was modified to the extent that the petitioner was held liable to pay interim maintenance to the respondent-wife-Shruti Mehta @ Rs.45,000/- per month from the date of filing of the application, with a further modification that the maintenance granted by the Air Force authority to the respondent-wife @ Rs. 19,000/- per month shall be adjusted/deducted from the arrears of interim maintenance fixed by this Court.

Briefly stated, the respondent-wife has filed a petition under Section 125 Cr.P.C. for grant of interim maintenance. As per petition, the parties were married on 30.5.2015. Sufficient dowry was given in the marriage. The marriage was performed with a great pump and show. The respondent was not being maintained by the petitioner, who, is an able bodied person and a Sqn. Leader in Indian Air Force and is drawing salary more than Rs.1,25,000/- per month. He has sufficient means to provide maintenance to the respondent but was intentionally and deliberately avoiding his duties to maintain. The respondent has claimed interim maintenance @ Rs.50,000/- per month for her survival along with Rs.1 lakh as litigation expenses.

The said application was resisted by the petitioner in his capacity as a respondent in the petition pending before the Magistrate. As per petitioner, the application has been filed by the respondent on false and frivolous grounds, so as to harass him. Neither dowry was given nor domestic violence was ever committed by the petitioner upon the respondent. The respondent herself has turned her life worse than a hell because of her arrogant behaviour. He is earning Rs.1 lakh per month, but after deductions, his carry home salary comes to Rs.50,000/- per month, whereas the respondent has sufficient movable and immovable properties in

her name and she is MBA, B.Ed. and also possessing Diploma in Fashion Designing. She is earning substantially and therefore, is not entitled to any maintenance.

After hearing learned counsel for the parties and considering the status of the parties, learned Magistrate vide order dated 27.10.2017 had awarded interim maintenance to the respondent @ Rs.15,000/- per month from the date of passing of the order. The operative part of paragraph 6 of the order reads as under:-

“After hearing the arguments advanced by learned counsel for both the parties and after perusing the case file, it is observed by the Court that the factum of marriage between the parties is admitted. Further, this Court is of the view that it is the matter of evidence that who has deserted whom and for what reason, however, right now the Court has only to ascertain that whether the petitioner is entitled to any maintenance or not. Further, the Court is of the view that respondent cannot escape from his liability to maintain his wife by saying that she is able to earn any amount on the basis of her educational qualification and it is the legal obligation of every husband to maintain his wife in every situation.

At this stage, after perusing the material placed on record, the Court is of the view that the petitioner is entitled for interim maintenance from the respondent till the petition is decided on merits and, therefore, the application in hand is hereby allowed and the respondent is directed to pay Rs.15,000/- per month to the petitioner as interim maintenance from the date of order, further, the extent of litigation expenses shall be decided with the final decision of the petition. It is also clear that in case she received maintenance in any other case that maintenance shall be merged in the present

maintenance. It is ordered accordingly.”

The order dated 27.10.2017 was challenged by way of two separate revision petitions by the parties. The respondent-wife-Shruti Mehta has sought enhancement of interim maintenance awarded by learned Magistrate, whereas petitioner-husband(Aman Mehta) has prayed to set aside the very order dated 27.10.2017 passed by learned Magistrate awarding her the maintenance on the ground that the respondent is not entitled to any maintenance from him.

The relationship between the parties and the marriage are not in dispute. It is also not in dispute that the petitioner is working in Indian Air Force and is drawing salary @ Rs.1,25,000/- per month. The Army authority has also fixed maintenance allowance to the respondent @ Rs.19,000/- per month from March, 2017 for a period of five years at a time or till re-union or divorce or grant of maintenance allowance by civil court.

The challenge of respondent-wife before the revisionary Court was confined to (i) that the order dated 27.10.2017 awarding interim maintenance should have been from the date of filing of the application seeking maintenance, but the maintenance has been awarded by the trial Court from the date of passing of the order and no such reason has been assigned in this regard; (ii) the amount so awarded by learned Magistrate is on the lower side.

Similarly, the petitioner-husband has challenged the order dated 27.10.2017 on the ground that (i) the awarded maintenance @ Rs.15,000/- per month is too excessive with his carry home salary, i.e., Rs.30,649/- per month, (ii) he is enrolled as a Sqn. Ldr. in Short Service Commission and would not be entitled to any benefit of deduction after his retirement and his

service tenure is for a limited period of ten years, which may be extended for maximum for a period upto four years and thus, he would be on road very soon.

Learned counsel for the petitioner-husband has argued that the revisionary court has enhanced interim maintenance to the wife @ Rs.45,000/- from the date of filing of application. Though the maintenance granted by the Air Force Authority @ Rs. 19,000/- has been adjusted/deducted from the arrears of interim maintenance fixed by the Court. He has further argued that manifest injustice has been caused to the petitioner by awarding maintenance @ Rs.45,000/- per month, that too from the date of filing of application. The petitioner-husband has never refused to pay maintenance to the respondent, but at the same time the respondent-wife has not been able to give any reasonable ground to stay away from the matrimonial home. In these circumstances, she is not entitled for any maintenance. The revisionary court has committed legal error by giving a wrong finding that the petitioner has increased his deductions from his salary in order to show his income on lower side. As per pay slip of the petitioner-husband, deductions have been enhanced as compared to his previous deductions in the year 2015. The deduction made by Air Force Authority in the maintenance being paid to the respondent @ Rs.19,000/- per month was also mentioned in the deductions whereas it was not mentioned in the pay slips for the months of March and May, 2015 and this fact has not been appreciated by the revisionary court. Moreover, the respondent-wife is highly qualified. She is MBA, B.Ed. and also possessing Diploma in Fashion Designing. Therefore, she has potential to earn substantial amount and can independently maintain herself. He states that

the petitioner has also to look after his unmarried sister and old parents.

Learned counsel for the petitioner has further argued that the maintenance should have been awarded from the date of passing of the order and not from the date of filing of application. He refers to judgment passed by the Hon'ble Apex Court in **Shail Kumari Devi and another v. Krishan Bhagwan Pathak @ Krishun B. Pathak 2008(3) RCR (Criminal) 842**, to contend that while deciding the application under Section 125 Cr.P.C., the Magistrate is required to record reasons for granting or refusing to grant maintenance to wives, children or parents. Such maintenance can be awarded from the date of the order, or, if so ordered from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of application, express order is necessary. The revisionary court cannot interfere in the well-reasoned order passed by learned Magistrate.

Learned counsel for the petitioner has also relied upon the judgment passed by the Honble Apex Court in **Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy 2017(2) RCR (Civil) 1033**, to contend that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the wife.

On the other hand, learned counsel for the respondent has argued that there is no illegality in the order passed by the revisionary court whereby considering the income of the petitioner, the interim maintenance has been enhanced from Rs.15,000/- to Rs.45,000/- per month from the date of filing of application.

Heard learned counsel for the parties.

The petition is accompanied with the pay slips of the petitioner

wherein his gross entitlement for the month of March, 2015 is Rs.86342/-, for the month of May, 2015 is Rs.96,377/- and for the month March, 2017 is Rs.1,04,531/-. Similarly, as per pay slip for the month of October, 2017, his gross entitlement is Rs.1,35,868/-. No doubt gross deduction of Rs.95,788/- has been shown from the salary of the petitioner in the pay slip for October, 2017 which is reflected in Annexure P-4 (Colly) and his net pay comes to Rs.40,080/- per month, but this includes Rs.42,000/- as PF deductions which the petitioner seems to have opted for higher deduction vis-a-vis compulsory deductions.

This Court finds that there is no dispute to the proposition of law as held in **Shail Kumari Devi's case (supra)**, which is clear in the manner that for awarding maintenance from the date of application, express order is necessary. In the case in hand, the order passed by the revisionary court is clear and there is no ambiguity whereby the learned revisionary court has awarded maintenance to the respondent-wife from the date of filing of application.

As regards the argument of learned counsel for the petitioner that 25% of the husband's net salary would be just and proper to award maintenance, this Court finds that the said judgment in **Kalyan Dey Chowdhury's case (supra)**, refers to grant of permanent alimony in a divorce case between the parties whereas in the case in hand, the maintenance is altogether interim in nature and has not attained finality that too in the proceedings under Section 125 Cr.P.C. The Father of the petitioner is a retired person from Canara Bank and is drawing pension @ Rs.20,000/- per month, but at the same time, though the petitioner has an unmarried sister but she is also working. Therefore, no special reasons are

there to divest the respondent from awarding interim maintenance.

The Hon'ble Apex Court in **Jaiminiben Hirenghai Vyas and another v. Hirenghai Rameshchandra Vyas and another 2015(1) RCR (Criminal) 84**, has held that though as per Section 354(6) Cr.P.C., every order under Section 117 or sub-section (2) of Section 138 and every final order made under Section 125, Section 145 or Section 147 shall contain the point or points for determination, the decision thereon and the reasons for the decision, but in the case in hand, the maintenance awarded to the wife is interim in nature, therefore, no such reasons are required to be recorded. Considering the fact that the respondent is a destitute lady and the petitioner has failed to substantiate any such material before the Court that she is earning, this Court finds that there is complete justification made by the revisionary court to allow interim maintenance to the respondent-wife from the date of filing of application.

In **Bhuwan Mohan Singh v. Meena and others AIR 2014 SC 2875**, the Hon'ble Apex Court has held that the Court can award maintenance from the date of order or from the date of application. However, for awarding maintenance from the date of application, no special reasons are required to be recorded.

Accordingly, keeping in view the financial status of the parties, the service tenure of the petitioner who has been appointed by Short Service Commission, the salary being drawn by him and deductions as reflected in Annexure P-4 (Colly), the present petition is disposed of with a modification in the order dated 15.1.2019 passed by the learned Sessions Judge, Yamuna Nagar at Jagadhri to the extent that instead of Rs.45,000/- per month awarded by the revisionary court, the petitioner will pay

Rs.35,000/- per month to the respondent-wife as interim maintenance from the date of filing of application which also includes the deduction made by the Air Force Authority.

The calculations would be made by the trial Court and necessary information would be sent to the Air Force Authority. Necessary consequences would follow accordingly. In any case, the petitioner shall pay interim maintenance @ Rs.35,000/- per month to the respondent-wife from the date of filing of application.

May 14, 2019
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No