

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

CRM-M-8986 of 2019.

Decided on:- February 27, 2019.

Man Simran Singh.

.....Petitioner.

Versus

Pushpinder Kaur and another

.....Respondents.

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

Present:- Mr. Yashdeep Nain, Advocate
for the petitioner.

HARI PAL VERMA, J.

Man Simran Singh, the petitioner has filed present petition under Section 482 Cr.PC seeking quashing of order dated 07.02.2019 passed by learned Additional Sessions Judge, Panchkula (Annexure P-1), whereby a pre-condition has been imposed directing the petitioner to deposit arrears of maintenance @ Rs.10,000/- per month from the date of filing of the application before the executing Court so as to show his *bona fide*.

Briefly stated, respondent No.1-wife Pushpinder Kaur and respondent No.2-minor daughter Jasnaz Kaur, who is represented by respondent No.1 as her mother and natural guardian, filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, the Domestic Violence Act) against petitioner-husband Man Simran Singh and other accused, alleging physical violence, verbal abuse,

emotional abuse and economic abuse committed by the accused persons upon the complainant. As per the complaint, marriage between the petitioner-husband and respondent No.1-wife took place on 07.12.2015. The respondent No.1-wife and her parents were made to believe that the accused (including the petitioner) belong to well placed family and will not raise any demand of dowry. The petitioner-accused was working in L & T company at the time of marriage and as disclosed, was getting a salary around Rs.80,000/- per month apart from other benefits. Out of this marriage, respondent No.2 Jasnaz Kaur was born on 08.12.2016, but no one was happy on the birth of girl child. Even during the pregnancy of respondent No.1-wife, the petitioner-accused has been compelling her to go for foetus test to ascertain the sex of the child in womb. The accused never treated the complainant and her daughter well. In the complaint filed under the Domestic Violence Act, she has claimed monthly maintenance @ Rs.40,000/- to support herself and her daughter upto 31.03.2020 and Rs.48,000/- per moth w.e.f. 01.04.2020 with an increase throughout @ 15% per year due to increase in the price of eatable, wearable and educational expenses. She has also prayed for interim relief as provided under Section 23 of the Domestic Violence Act, as under:

“In the light of the above mentioned facts and circumstances of the case and the fact that the complainants are completely without the basic necessities of food, maintenance and shelter and has no means to survive and hence an exparte ad interim order for grant of maintenance of Rs.40,000/- per month be granted in favour of the complainant No.1 and Rs.30,000/- per month in favour of the complainant No.2.”

Vide order dated 19.11.2018, learned Judicial Magistrate 1st Class, Panchkula had directed the petitioner-husband to pay Rs.10,000/- per month towards maintenance of respondent No.1 i.e. Pushpinder Kaur and Rs.30,000/- per month towards maintenance of respondent No.2 Jasnaz Kaur from the date of application. Additional amount of Rs.20,000/- was also awarded on account of litigation expenses. It was made clear that the order granting interim maintenance dated 19.11.2018 shall be effective only till final disposal of the complaint.

The aforesaid order dated 19.11.2018 passed by learned Magistrate was challenged by the petitioner-husband by way of appeal before the Court of Session and vide order dated 07.02.2019, learned Additional Sessions Judge, Panchkula directed the petitioner-husband to deposit arrears of maintenance @ Rs.10,000/- per month from the date of filing of the application before the executing Court on the date fixed to show the *bona fide*. The said order dated 07.02.2019 passed by the appellate Court is reproduced as under:

“Case is fixed for arguments. Learned counsel for the respondents submitted that till date, appellant has not paid any amount towards interim maintenance awarded by the learned trial Court vide order dated 19.11.2018 w.e.f. filing of date of application.

Learned counsel for the appellant submitted that amount awarded by the learned executing Court is on higher side and he is not able to pay maintenance at the rate awarded by the learned trial Court.

Considering the facts, without commenting on the merit of the case, the appellant is directed to deposit arrears of maintenance @ Rs.10,000/- per month from the date of filing of the application before the executing court on the date fixed to show the bona fide and thereafter arguments will be head in this appea.

Case is adjourned to 18.02.2019 for arguments.”

Through the instant petition, the petitioner-husband has challenged the aforesaid order dated 07.02.2019 passed by learned Additional Sessions Judge, Panchkula.

Learned counsel for the petitioner-husband has argued that the impugned order dated 07.02.2019 has been passed in erroneous manner, without appreciating the fact that the petitioner is suffering from mental trauma because of desertion by the wife and various litigations have been thrust upon him by respondent No.1 and it is for this reason, the petitioner could not perform his duty well, compelling him to leave the job and as on date, he has no source of income. It is too difficult for the petitioner to deposit Rs.10,000/- per month towards arrears of maintenance. Moreover, learned appellate Court cannot impose such unreasonable condition more particularly when the petitioner is not in a position to deposit such a huge amount. The order dated 07.02.2019 passed by learned appellate Court, is therefore, tantamount to curtailment of statutory rights and this condition is liable to be set aside. The condition so imposed is unreasonable and has made the right of petitioner of appeal as illusory. It is practically not possible for the petitioner to deposit the amount so directed by learned appellate Court. The imposition

of such condition on the statutory remedy of appeal would render it unjust, arbitrary and bad and cannot sustain before the scrutiny of law.

While referring the judgments of Hon'ble Delhi High Court i.e. ***Sabina Sahdev and others Versus Vidur Sahdev 2018(4) RCR (Criminal) 30*** and ***Rahul Raj Versus Ms. Deepti Aggarwal*** passed in ***CRL.M.C.4670 of 2018*** decided on October 12, 2018, learned counsel for the petitioner-husband has argued that when a revision or appeal is filed against the interim order of maintenance under Section 23 or 29 of the Domestic Violence Act or against the order under Section 125 of the Code of Criminal Procedure, 1973, the same would be maintainable and would be entertained and heard without insisting upon any pre-condition of deposit of the arrears of maintenance ordered by the Magistrate.

I have heard learned counsel for the petitioner.

Having gone through the law laid down by Hon'ble Delhi High Court in ***Sabina Sahdev and others' case*** (supra), this Court finds that there is no dispute with the proposition of law settled in the said judgment. The relevant observations made in paragraph No.29 of the said judgment read as under:

“29. As rightly pointed out by Mr. Bahl, imposition of a limitation on the statutory remedy of revision/appeal under Section 399 of the Cr.P.C. or Section 29 of the DV Act- as the case may be, also falls foul of Article 14 of the Constitution of India for the reasons noticed by the Division Bench in Gagan Makkar (supra). Even if the condition in question - of the nature directed by the learned Single Judge in Rajeev Preenja (supra), were to exist in the statutory framework, the same may fail the test of reasonableness under Article 14 of the Constitution of

India. This is for the reason that, in a given case, the order granting interim maintenance passed by the Ld. Magistrate either under Section 125 Cr.P.C or under Section 29 of the DV Act, may be so harsh and so unreasonable, as to make it impossible for the opposite party/ husband to comply with the same. Experience shows that in a large number of cases, the arrears of interim maintenance- which may be granted from the date of moving of the application before the Ld. Magistrate, may accumulate to a very large amount running into lakhs of rupees. The arrears of interim maintenance may not necessarily be a meagre amount in all cases. It would be most unjust and unreasonable to bar his statutory remedy of revision/appeal as the case may be, merely because he may not be in a position to deposit the entire arrears of interim maintenance.”

A bare perusal of the aforesaid observations shows that at times in large number of cases, arrears of interim maintenance which may be granted from the date of moving of the application before learned Magistrate may accumulate to a substantial amount and arrears of interim maintenance may not be a meagre amount in all cases. Therefore, it would be unjust and unreasonable to put such like condition of deposit of arrears of interim maintenance.

However, in the case in hand, learned Magistrate has awarded a total interim maintenance of Rs.40,000/- per month payable to the respondent-wife and the minor daughter. The petitioner is well placed man working in L & T company at the time of marriage. In the complaint, it has been stated that his monthly income was Rs.1 lakh, whereas his father i.e. accused No.2 S. Amar Baljeet Singh is drawing a sum of Rs.80,000/- per month from pension and re-employment and they have no other liability

except to maintain the complainants. The complaint under the Domestic Violence Act was filed somewhere in July, 2017 and till date, nothing has come on record to suggest that any maintenance has been paid to the complainants. In order to survive, the respondent-wife and minor daughter require some amount towards maintenance. Therefore, learned Additional Sessions Judge in his wisdom has rightly directed the petitioner-husband to deposit arrears of maintenance @ Rs.10,000/- per month from the date of filing of the application on the date fixed before the executing Court so as to establish his *bona fide*. Such condition so imposed by learned Additional Sessions Judge in any case cannot be termed to be arbitrary. The petitioner is well-educated and well-placed person. Thus, facts in ***Sabina Sahdev and others' case*** (supra) are totally different and are hardly of any help to the petitioner in the facts and circumstances of the present case.

In the present petition, it is not that the petitioner has been directed to deposit the whole interim maintenance so awarded by learned Magistrate, but as against the awarded interim maintenance of Rs.40,000/- per month to the respondent-wife and minor daughter, learned appellate Court has directed the petitioner-husband to deposit the arrears of maintenance @ Rs.10,000/- per month only, so that the complainant and her daughter may get at least some amount to survive. Therefore, the judgment dated October 12, 2018 passed by Hon'ble Delhi High Court in ***Rahul Raj's case*** (supra) has no applicability in the present case. Accordingly, this Court does not find any illegality in the impugned order dated 07.02.2019 passed by learned Additional Sessions Judge, Panchkula.

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

February 27, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No