

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

CRR (F) No.148 of 2019.

Decided on:- May 09, 2019.

Sameer Kumar.

.....Petitioner.

Versus

Sonal and another

.....Respondents.

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

Present:- Petitioner in person.

Mr. Lalit Kumar, Advocate for
Mr. Ashwani Talwar, Advocate
for the respondents.

HARI PAL VERMA, J.

CRM-9165-2019

Prayer in this application filed under Section 482 Cr.PC read with Section 5 of the Limitation Act, 1963 is for condonation of delay of 189 days in filing the present criminal revision.

The pleaded grounds seeking condonation of delay in filing the petition are that it took sufficient time for the petitioner to get the certified copy of the impugned order, as the petitioner is a resident of Gurgaon whereas the consulting advocate is practising at Chandigarh. Besides this, due to financial constraints and sickness, the delay of 189 days has occurred, which is neither intentional nor deliberate.

Though the explanation given by the petitioner so as to condone the delay in filing the present criminal revision is not sound enough to

condone the delay, but still in the interest of justice and to provide a fair opportunity to the petitioner to argue the matter on merits, the present application is allowed and delay of 189 days in filing the instant criminal revision is condoned.

CRR(F) No.148 of 2019

The petitioner has filed present criminal revision against the judgment dated 30.05.2018 passed by learned Additional Principal Judge, Family Court, Faridabad, whereby in a petition filed by the respondents under Section 125 Cr.P.C., the family Court has declined the claim of respondent No.1-wife for maintenance, but has awarded maintenance to respondent No.2 Master Kanav @ Rs.18,000/- per month from the date of filing of the petition.

Briefly stated, the petitioner was married with respondent No.1 on 26.02.2004 and one child Master Kanav (respondent No.2) was born out of this wedlock on 24.07.2006. Though there are allegations and counter-allegations between the parties for beating and harassing the respondent No.1-wife, but while deciding the issue involved in the case, these facts have no relevance in the petition filed by the respondents under Section 125 Cr.PC, the family Court vide judgment dated 30.05.2018 awarded maintenance @ Rs.18,000/- per month to respondent No.2, but the same was declined to respondent No.1 as she was working as Assistant Professor with Manav Rachna University and earning a substantial amount.

In the aforesaid proceedings, respondent No.1-wife closed her evidence on 17.07.2017. Thereafter, the petitioner was granted opportunity to lead his evidence, but despite having been granted sufficient opportunities,

initially the petitioner-husband failed to lead any evidence and did not make any payment and was accordingly proceeded *ex parte*. However, on an application moved by the petitioner for setting aside *ex parte* proceedings, *ex parte* proceedings were set aside and accordingly, opportunity was granted to the petitioner to lead his evidence. But despite opportunity, no such evidence had been led and the evidence of the petitioner was closed by the court order. Moreover, the petitioner has failed to make any payment towards the interim maintenance constraining the family Court to issue conditional warrant of arrest, for which he was arrested and produced before the family Court. The petitioner remained in custody and thereafter, he made some part payment of Rs.1 lakh with an assurance that he will pay the arrears of maintenance by way of three cheques subject to filing of revision petition before this Court. The petitioner was directed to furnish security of Rs.3 lakh. The petitioner tendered three cheques and accordingly, the matter proceeded further. One of the cheque issued by the petitioner on its presentation was even dishonoured.

Since respondent No.1-wife admitted before the family Court in her cross-examination that she is working in Manav Rachna College and getting a salary of Rs.47,000/- per month, the family Court asked the respondent No.1 to bring her salary slip, but the same was not produced and accordingly, as she has withheld the best available evidence, she was not allowed any maintenance by the family Court. But at the same time, it was found that respondent No.2 minor son is studying in a school and a huge expenditure is being incurred on his studies. Therefore, the petitioner being father of respondent No.2 was equally under legal obligation for his

upbringing and maintenance and the petitioner being father cannot avoid his liability.

The family Court has noticed that the petitioner has not led any evidence in support of his case, rather, in his written statement, he has pleaded that he is working as an advocate in the Supreme Court and, therefore, the family Court has inferred that he was earning substantial amount from which he could maintain himself. Accordingly, the family Court has held that though respondent No.1 is not entitled to any maintenance, but respondent No.2 being a son of the petitioner is entitled for maintenance and accordingly, ordered maintenance @ Rs.18,000/- per month from the date of filing of the petition. The relevant paragraph Nos.13 and 14 of the impugned judgment dated 30.05.2018 passed by the family Court read as under:

“13. In view of the principle laid down in above cited case law and the above discussion, merit is found in the petition as filed by the petitioners and under these circumstances, it is ordered that while petitioner No.1 does not become entitled to any maintenance, the petitioner No.2 is ordered to be granted maintenance of a sum of Rs.18,000/- per month from the date of filing of petition. Issue No.1 is accordingly partly decided in favour of petitioners and issue No.2 against the respondent.

14. Keeping in view my detailed findings on both the aforesaid issues, the petition as filed by the petitioners deserves to be partly allowed and the same is accordingly allowed partly with costs by granting the petitioner No.2 maintenance of a sum of Rs.18,000/- per month from the date of filing of petition while petitioner No.1 does not become entitled to any maintenance.

It is made clear that any amount of maintenance awarded in this petition is adjustable with any other amount

awarded as maintenance to the petitioner No.2 in any other petition.

The petitioner No.2 is directed to provide his Bank Account number through petitioner No.1 to the respondent and respondent is directed to directly deposit the amount of maintenance in the Bank Account as provided to him of the petitioner No.2. File be consigned to records after due compliance.”

It is in the aforesaid circumstances, the petitioner has challenged the impugned judgment dated 30.05.2018 whereby maintenance was awarded to respondent No.2-son by way of present criminal revision.

The petitioner, who appeared in person, has argued that he has lost his permanent source of income in October, 2014 and thereafter he started his career as an advocate in the Hon’ble Supreme Court, but he could not prove as a successful advocate, thus not established in legal profession. Moreover, the petitioner started practice on the assurance given by respondent No.2, where she promised to support him during the initial struggling period, but instead of extending any assured support to him, she had left the matrimonial home on 23.11.2014. Respondent No.1, who is working as Assistant Professor in Manav Rachna International University, Faridabad must be earning Rs.1,50,000/- per month. In addition thereto, she is earning from the business of money lending and sale-purchase of the property. She is an over-ambitious lady, who wish to live life in her own terms and in lavish manner without observing the pious obligations of auspicious tie of marriage and commitments towards the petitioner, who sacrificed everything for the

sake of fulfilling promises he made to respondent No.1 at the time and during their marriage.

He further argued that not every advocate can establish in profession in such a short period. Though he joined the legal profession in October, 2014, but in spite of his best efforts, he could not get any brief to show his worth before the Supreme Court and now, he has joined the office of Advocate Harvinder Kaur Chaudhary w.e.f. December, 2016 on a retainership fee of Rs.10,000/- per month. On the other hand, respondent No.1, who has a lot of ego and has been misbehaving with the petitioner and his family members since beginning, had refused to live with her parents-in-law in July, 2007. Since the petitioner is a peace-loving person, he succumbed to her pressure and shifted to Gurgaon with respondent No.1. In October, 2014, he lost his permanent source of income for which he had to join the legal profession. But since he is not established in the profession, he is not earning the amount which he can pay to respondent No.2 towards maintenance. Even in the month of March, 2015, there was a theft in the house of the petitioner and the thieves had taken away his gold ornaments, mobile phones and a laptop leaving him in unconscious state. Petitioner apprehended that the incident of theft is conspired by his father-in-law. On 12.03.2015, one Bhagirath, who is friend of petitioner's father-in-law, had entered into the house of the petitioner and gave him beatings with sandals and he had taken away passport of the petitioner in a forcible manner. On 13.03.2015, his father-in-law had got an FIR registered against the petitioner in Police Station Sector-5, Gurgaon under Sections 380 and 457 IPC. The said FIR was

registered on false information. He was taken to CIA in police jeep and was surrounded by police team.

The petitioner has further argued that he is trying his level best so that respondent No.1 could return back to her matrimonial home. She has withdrawn from the company of the petitioner without there being any sufficient cause. Moreover, the petitioner was never allowed by respondent No.1 to meet his son and whenever he tried to meet his son, respondent No.1 always discouraged him by harassing and insulting him in public and lodging false complaints against him. The respondent No.2 is not entitled to any maintenance under Section 125 Cr.PC as the petitioner has neither neglected nor refused to maintain respondent No.2-son. Respondent No.1 is well placed lady and she can easily maintain respondent No.2.

On the other hand, learned counsel for the respondents has argued that the petitioner cannot escape from his legal obligation to maintain respondent No.2, who is none else, but a minor son of the petitioner and is pursuing his studies in a prestigious school. Moreover, the family Court has not awarded any maintenance to respondent No.1-wife and, therefore, it is quite difficult for her to maintain respondent No.2. Therefore, no interference is warranted with the impugned judgment dated 30.05.2018 passed by the family Court, which is rationally based.

I have heard learned counsel for the parties.

In compliance of order dated 19.03.2019 passed by this Court, the petitioner has paid Rs.20,000/- in cash to the counsel for the respondents in Court today towards litigation expenses.

The long drawn litigation between the parties is sufficient enough to observe that the petitioner and respondent No.1 are not inclined to stay together. The petitioner is an advocate practising in the Supreme Court, but considering the status of the parties, this Court finds that the awarded maintenance to respondent No.2-son is quite reasonable. The record reveals that the petitioner had ample opportunities to lead his evidence before the family Court, but he did not lead any evidence for which the family Court was constrained to close his evidence by court order. He even failed to make payment of interim maintenance allowance leading to issuance of conditional warrants of arrest for which he was arrested as well. Even the cheque issued by the petitioner when presented in the bank, was dishonoured.

In the case in hand, the family Court has awarded maintenance only to respondent No.2-minor son. The certificate dated 17.12.2016 (Annexure P-3) so attached with the petition issued by Advocate Harvinder Kaur Chaudhary shows that the petitioner is working as assistant advocate with her from 01.12.2016 and she is giving Rs.10,000/- per month as retainership fee. Thus, as the said certificate relates to the year 2016, with passage of time, the petitioner must have established his practice as reasonably good. The petitioner is well-qualified person. Apart from being an Advocate before the Supreme Court, he was Chartered-Accountant as well and was engaged in the business of finance. Therefore, considering the fact that he is a C.A. as well as a practising Advocate in the Supreme Court, this Court finds that the awarded maintenance of Rs.18,000/- per month to respondent No.2-minor son is in no manner unreasonable. Moreover, cost of

living is increasing day by day. Thus, no interference is warranted with the impugned judgment dated 30.05.2018 passed by the family Court.

So far as the argument raised by the petitioner that he is not being allowed by respondent No.1 to interact with the respondent No.2-minor son, this Court finds that the petitioner can avail appropriate remedy to claim the custody including the visitation rights by approaching the proper forum and this Court has no doubt that in case such like proceedings are initiated, the same will be considered by such Courts accordingly in accordance with law. The argument of the petitioner that he is ready to take his wife with him shall remain available to him during such custody case of his son.

Accordingly, affirming the impugned judgment dated 30.05.2018 passed by the family Court, present criminal revision, being devoid of any merit, is dismissed.

May 09, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No