

105.

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

CRM-M-46898-2017

Date of decision:20.05.2019

DAVINDER PAL MALHOTRA AND ANOTHER ... Petitioners

versus

STATE OF PUNJAB AND ANOTHER Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. S.S. Grewal, Advocate, for the petitioners.

Mr. Jagmohan Ghumman, DAG, Punjab, for respondent No.1.

Mr. Akhilesh Yyas, Advocate, for respondent No.2.

HARI PAL VERMA, J.(Oral)

The petitioners, who are in-laws of respondent No.2, have filed this petition for setting aside the order dated 11.10.2017 passed by learned Additional Sessions Judge, Amritsar whereby, while admitting the petitioners on anticipatory bail and making the order dated 28.08.2010 (interim order- bail) as absolute, has put a condition that the petitioners would comply the order dated 10.11.2016 passed by learned Additional Sessions Judge, Amritsar with regard to payment of maintenance to the tune of Rs.10,000/- per month from the date of the order of the trial Court and the petitioners shall not leave the country without prior permission of the Court.

Pursuant to the order dated 07.08.2018, counsel for the petitioners has produced a copy of the judgment dated 10.11.2016, which is taken on record.

Counsel for the petitioners has argued that respondent No.2 had filed a complaint under Sections 406, 498-A of IPC against the petitioners and their son Nitin Malhotra wherein all the accused have been summoned to face trial. Respondent No.2 has also filed a petition under the Domestic Violence Act as well as a petition under Section 125 Cr.P.C. for maintenance against the son of the petitioners wherein maintenance @ Rs.10,000/- per month was awarded by the learned Additional Sessions Judge, Amritsar vide order dated 10.11.2016. He has further argued that the petitioners are parents-in-law of respondent No.2. The maintenance awarded under Section 125 Cr.P.C. and under the Domestic Violence Act cannot be recovered from the petitioners. Further, no such condition can be imposed while granting anticipatory bail except the condition as mentioned under Section 438 Cr.P.C. Moreover, respondent No.2 has already initiated proceedings against Nitin Malhotra, who is none else but her husband. He has further argued that the petitioners have already disinherited their son. Thus, their relations with their son are not cordial.

Counsel for respondent No.2 has argued that respondent No.2 is a legally wedded wife of Nitin Malhotra, who is the son of the petitioners. Nitin Malhotra is residing with the petitioners. Moreover, petitioners, being in-laws of respondent No.2, are bound to maintain respondent No.2 and her minor daughter. There is nothing illegal in the condition imposed by the learned Additional Sessions Judge directing the petitioners to pay maintenance to the tune of Rs.10,000/- per month from the date of the order.

He has further argued that the petitioners never disinherited their son, rather it is a camouflage so as to deprive respondent No.2 from the claim of maintenance.

I have heard counsel for the parties.

Undisputedly, respondent No.2 has already initiated proceedings against her husband Nitin Malhotra which includes the proceedings under Section 125 Cr.P.C. and under the Domestic Violence Act. Moreover, the complaint filed under Sections 406, 498-A of IPC by respondent No.2 is still pending consideration before the trial Court. Respondent No.2, being wife, is entitled to pursue her remedies against her husband, but imposing condition like the present one by the learned Additional Sessions Judge, Amritsar, is totally unwarranted. In case there is an order passed by the court that in proceedings under Section 125 Cr.P.C. or in proceedings under the Domestic Violence Act, respondent No.2 has a remedy to invoke against her husband, which includes the execution proceedings as well.

In view of above, the present petition is hereby allowed and the condition imposed by the learned Additional Sessions Judge, Amritsar, upon the petitioners to pay maintenance to the tune of Rs.10,000/- per month, is set aside, however, with liberty to the complainant to invoke the remedy as available to her in accordance with law.

However, it is made clear that the observation made hereinabove is only confined to the present case and shall not construe any expression on the merits of the case.

(HARI PAL VERMA)
JUDGE

20.05.2019
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No