

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRR No.4917 of 2016 (O&M)

Date of Decision: 07.02.2019

Narender Singh

...Petitioner(s)

Versus

Archana

...Respondent(s)

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

Present:- Mr. J.P. Sharma, Advocate
for the petitioner.

HARI PAL VERMA, J. (Oral)

CRM-3763-2019:

The application for placing on record salary certificates is allowed. Documents Annexures P-3 and P-4 are taken on record.

CRR No.4917 of 2016:

The petitioner-husband has filed the present revision petition against judgment dated 08.02.2016 passed by learned Additional Sessions Judge, Narnaul, whereby the appeal filed by the respondent-wife against judgment dated 01.12.2015 passed by learned Judicial Magistrate Ist Class, Narnaul, was allowed.

Briefly stated, the respondent-wife had filed a petition under Section 125 CrPC seeking maintenance against the petitioner-husband, with the averments that her marriage was solemnised with the petitioner on 23.11.2010. However, after the marriage, she was taunted and ill-treated by the petitioner and his family members for bringing less dowry. She was

deserted by the petitioner since 08.05.2012. The petitioner is working in Delhi police. Since the respondent was not in any employment, she filed a petition under Section 125 CrPC, which was allowed by learned Magistrate and while considering the monthly earning of the petitioner as Rs.29,087/-, awarded maintenance to the respondent-wife @ Rs.6,000/- per month from the date of the passing of the order vide judgment dated 01.12.2015. The relevant part of the aforesaid judgment reads as under:-

“18. After having heard Ld. Counsels for the parties it is observed that the petitioner has proved that the respondent is earning Rs.29,087/- per month and on the other hand, the respondent has failed to prove that the petitioner is earning hand. In the backdrop of factual position in the present case, having scrutinized the entire available evidences, court comes to a positive conclusion that despite having sufficient means respondent has neglected or refused to maintain the applicant who is unable to maintain herself. Keeping in view the perspective of totality of the facts and circumstances, peculiar to present case, the social strata to which the parties to litigation belong, their respective means, prevalent inflation, rising price index, rising prices of the bare necessities of life like food, shelter, clothing, medical expenses and other unforeseen contingencies, this court will consider the claim of petitioner in right perspective. The case of the respondent/husband is that he has liability to pay a monthly rent of Rs.6,000/- per month, he is paying a monthly installment of Rs.8,235/- of bank loan and also paying an amount of Rs.1,800/- per month for use of electricity and water. He submitted that he has no other source of income except income fro salary and has to fulfill all the above stated expenditures and besides this he has to maintain himself. By disclosing these facts he cannot absolve himself from his legal

duty to maintain his legally wedded wife. At this stage petitioner has tendered an affidavit to the effect that she is not teaching in any school/college whereas she is taking coaching and incurring an expenditure of Rs.11,12,000/- per month. She further deposed that in case, whenever she gets any Govt. job she will not claim for maintenance from respondent. Above all, the respondent being the legally wedded husband of the petitioner is having bounden duty to maintain her wife because marriage is still subsisting between the parties. Thus, under such circumstances, I hold that the petitioner is entitled for maintenance allowance @ Rs.6,000/- per month from the date of passing of this order. Application stands disposed of accordingly. Copy of the order be supplied to the applicant free of cost, in accordance with the statutory provisions. File be consigned to the record room after due compliance.”

Not satisfied with the aforesaid awarded maintenance, the respondent-wife filed an appeal, seeking modification/enhancement of the maintenance amount. It was pleaded that the petitioner-husband is working in Delhi police and earning between Rs.28,000/- to Rs.30,000/- per month. Additionally, father of the petitioner is also working in Government College and earning between Rs.35,000/- to Rs.40,000/- per month whereas his brother is serving in ITBP and earning Rs.20,000/- per month. The petitioner has enough properties, which include plots and land in his name as well as his family members. Learned Additional Sessions Judge vide judgment dated 08.02.2016 while considering the salary of the petitioner at Rs.29,087/- per month, awarded/enhanced maintenance to Rs.10,000/- per month to the respondent-wife from the date of filing of the petition.

It is against the aforesaid judgment dated 08.02.2016, the petitioner (husband) has preferred the present revision petition.

Learned counsel for the petitioner has argued that learned Additional Sessions Judge has modified the judgment dated 01.12.2015 passed by learned Judicial Magistrate Ist Class and granted maintenance to the respondent from the date of filing of the petition, instead of from the date of passing of the order, despite the fact that the said judgment was never challenged on this ground and therefore, the impugned judgment is not sustainable. He has further argued that the petitioner-husband had also filed a review application seeking review/recalling of order dated 08.02.2016 passed by learned Additional Sessions Judge on the ground that father of the respondent is a retired Subedar from Army and getting pension of Rs.30,000/- per month and her mother is working in a Christian School and earning Rs.35,000/- per month, whereas the respondent herself is an able-bodied educated woman, getting salary of Rs.18,000/- per month from Government College, Narnaul and presently, she is teaching in a private college and earning Rs.22,000/- per month. But learned Additional Sessions Judge dismissed the said application vide order dated 23.09.2016 on the ground that he has no power to recall or review his own order. The Court below has not appreciated the fact that the petitioner had availed loan from Axis Bank and paying instalments of Rs.7,216/- per month apart from paying rent of Rs.6,000/- per month, electricity charges of Rs.3,000/- and spending Rs.5,000/- per month on his diet. In this manner, he is spending more than Rs.25,000/- per month for his survival. He also requires money for traveling, personal expenses etc. The petitioner has produced his salary

slips for the month of November, 2015 and January, 2016 as Annexures P-3 and P-4.

I have heard learned counsel for the petitioner.

There is no dispute that the petitioner is working as a Constable with Delhi Police. There is no liability upon the petitioner so far as his family members are concerned. He has produced his salary certificates Annexures P-3 and P-4 which relate to the months of November, 2015 and January, 2016. As per the salary slips, his gross salary for the month of November, 2015 is Rs.30,705/- per month, though after deductions, the payable amount is Rs.20,426/-. Deductions in salary is also for the loan availed by him, which is part of his planning. Virtually, such deductions most of the times are based upon income tax deductions. Even otherwise, payment towards loan is again a saving for the petitioner. Moreover, after November, 2015, 7th Pay Commission has also come into force and thereafter, there must be substantial increase in the salary of the petitioner, which includes arrears of such increase. The petitioner instead of placing on record his latest pay slip, has opted to produce on record his old pay slips for November, 2015 and January, 2016, which were otherwise available when the impugned judgment was passed by learned Additional Sessions Judge on 08.02.2016. In any case, his salary cannot be less than Rs.40,000/- per month after coming into force of the 7th Pay Commission. Thus, considering the fact that the petitioner-husband, who is serving in Delhi Police, has failed to establish that the respondent-wife is earning independently and his monthly income being more than Rs.40,000/- per

month after 7th Pay Commission, no interference is warranted in the impugned judgment passed by learned Additional Sessions Judge.

Accordingly, the present revision petition is hereby dismissed.

February 07, 2019
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No