

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Revision No. 891 of 2018 (O&M)
Date of decision : November 29, 2019

Lakhvir Singh

....Petitioner

versus

Amarjit Kaur and others

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Gulshan Sharma, Advocate for
Mr. Parveen Malhotra, Advocate, for the petitioner

Mr. Mohd. Yousaf, Advocate, for the respondents

Fateh Deep Singh, J. (Oral)

On the application of wife Amarjit Kaur and her three minor children Amrit Lakhanpal Singh, Kismat Kamalpreet Kaur and Gurikam Singh, aged around 8 to 16 years whereby all of them have sought maintenance from respondent present petitioner Lakhvir Singh husband and father respectively, the court of learned Judicial Magistrate Ist Class, Ludhiana vide orders dated 14.6.2017 allowed the application directing respondent to pay interim maintenance to

the tune of Rs 2000/- per month to the wife and Rs 1500/- per month to each of the minor children. The wife and the children assailed the order in a revision before the court of learned Additional Sessions Judge, Ludhiana who vide impugned orders dated 1.12.2017 allowed the revision petition and modified order thus allowing Rs 4000/- per month to the wife and Rs 3000/- per month to each of the three kids (in all totalling Rs 13,000/- per month). The same is subject matter of assailment by the aggrieved husband.

Heard learned counsel for the parties and perused the records.

The averments made by counsel for the petitioner that the wife was leading an adulterous life which was prima facie brought about by the husband by filing and relying on FIR bearing No. 89 dated 29.8.2016 under Sections 306,506 IPC, Police Station Sudhar, District Ludhiana. Learned counsel for the respondents has sought to claim that it is only an allegation which has yet to be established and therefore, the claim is not fully established.

Appreciating the submissions, it is an order passed on an interim maintenance so awarded by the courts below and therefore, at that juncture only prima facie allegations have to be come about. Section 125 Cr.P.C. enlist by way of Sub-section (5)

that any wife in whose favour an order has been made is living in adultery or that without sufficient cause refuses to live with her husband, the Magistrate is well within his powers to cancel cited order. The FIR placed on the record which even Mr. Yousaf, counsel for the respondents could not rebut and accepts that charges have been framed and matter is under trial reflects that the complainant therein one Jagdish Singh has levelled allegations against Amarjit Kaur present respondent no. 1, the wife of the present petitioner for having enticed the son of the complainant namely Harjinder Singh alias Happy then aged around 19 years and developed illicit relations with him. It is clearly detailed therein that the lady is aged 43/44 years having three children and were living together and she was forcing the deceased son of the then complainant to enter into a wedlock with her as a consequence of which the deceased committed suicide. Thus, from this it was well enumerated that the wife was living separately from the husband without any sufficient cause to enable her to lead an adulterous life. However, in the impugned findings the courts below had lost sight of this fact when it was well there before the learned Judicial Magistrate and is part of the order which was assailed before the learned Additional Sessions Judge. Counsel for the respondents could not convince this Court

how the impugned order has failed to take into consideration such an aspect of the matter which had a direct bearing on the maintenance and it was prima facie established through documentary means of this adulterous relationship. However, counsel for the petitioner could not convince how the minor children could be denied their right to maintenance or the fact that the petitioner happened to be an Ex-serviceman getting pension and carrying on avocation by means of a private job. In the light of the prevalent cost of living the children too needs money for their upkeep, studies and unforeseen events. Thus award of Rs 3000/- per month to each of the three kids is not on the higher side in view of the escalating day to day prices. However, the wife in view of the reasons detailed above is certainly not entitled to any interim maintenance. The impugned order qua wife respondent no. 1- Amarjit Kaur is hereby set aside being illegal and contrary to the records on the file and thus modifying the orders allowing and upholding impugned orders qua minor children respondents no. 2 to 4 and accepting the revision qua respondent no. 1 wife Amarjit Kaur and who is held to be not entitled to grant of any interim maintenance. It is made clear that any observation given herein would not have any bearing either on the main application under

Section 125 Cr.P.C. or any other matter which may be pending inter-
se between the parties and is purely for the decision of the present
matter.

The revision stands allowed partly in the aforesaid terms.

November 29, 2019

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(Fateh Deep Singh)
Judge

<i>Whether speaking/reasoned ?</i>	Yes/No
<i>Whether Reportable ?</i>	Yes/No