

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

CRR (F) No.839 of 2019 (O&M)
Decided on:- October 23, 2019.

Manoj Batra.

.....Petitioner.

Versus

Simran Batra and another

.....Respondents.

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

Present:- Mr. Sushil Jain, Advocate
for the petitioner.

HARI PAL VERMA, J.

The petitioner-husband has filed present criminal revision impugning the judgment dated 20.09.2019 passed by learned Additional District and Sessions Judge, Principal Judge, Family Court, Sonipat, whereby on a petition filed by the respondents under Section 125 Cr.P.C., the family Court, while considering the salary of the petitioner as Rs.52,000/- per month, has awarded maintenance allowance @ Rs.6,000/- per month to each of to the respondents from the date of filing of the petition.

Briefly stated, the respondents had filed a petition under Section 125 Cr.PC through their natural guardian/mother Smt. Madhu Batra, who is legally wedded wife of the petitioner. Out of this wedlock, respondents No.1 and 2 were born on 28.06.2001 and 13.02.2004 respectively. Since the mother of the respondents was being maltreated by the petitioner on one pretext or

the other, she had filed an application against the petitioner under Section 12 of the Protection of Women from Domestic Violence Act, 2005. The petitioner had physically assaulted his wife and for this reason, she had also filed a complaint against him under Section 323, 324 and 506 IPC. The petitioner had left the company of the respondents and their mother since 20.4.2014 continuously and he was neglecting them, necessitating them to file present petition under Section 125 Cr.P.C.

Whereas the respondent No.1 was studying in 9th class in Holy Child Senior Secondary School, Sonipat, respondent No.2 was studying in 6th class in Janki Dass Kapur Public School, Sonipat. The respondents have no source of income and being the minor sons of the petitioner are required to be maintained by him as they have no movable and immovable property in their names. The petitioner is an employee with New India Assurance Company Limited, New Delhi.

Considering the position, status of the parties and reasonable requirements of the respondents as well as income and property of the parties, the overall financial position of the petitioner and his liability, learned family Court has granted aforesaid maintenance to the respondents.

Dissatisfied with the aforesaid maintenance awarded by the family Court in favour of the respondents, the petitioner has filed the present criminal revision against the impugned judgment dated 20.09.2019 passed by the family Court.

Learned counsel for the petitioner has argued that the mother of the respondents had left the matrimonial home of its own without there being any sufficient cause or reason. Learned family Court has awarded Rs.12,000/-

per month as maintenance to the respondents, whereas the said petition ought to have been dismissed as the mother of respondents had left the matrimonial home at her own and she is financially well settled. She is working as government teacher and is drawing salary of Rs.88,624/- per month, whereas the petitioner is drawing salary of about Rs.52,000/- per month. In this manner, the mother of the respondents is drawing much higher salary than the petitioner. The petitioner is living in a rented accommodation as he has been thrown out from the matrimonial home by the mother of the respondents and the respondents are residing in the said house along with their mother. In this manner, the petitioner is required to pay rent for the accommodation in which he is residing, whereas the respondents are staying in the matrimonial home without paying any rent/lease money.

He has further argued that, in fact, the present petition has been filed at the behest of the mother of respondents, so as to harass the petitioner. The respondents are not entitled to any maintenance from the petitioner. While determining the amount of maintenance, the Court has to take into consideration the financial condition and status of the parties, reasonable wants of the claimant, income and property of the claimant and the husband as well as the number of persons whom the husband is otherwise required to maintain, but no such weightage has been given to these considerations. The petitioner is required to take care of his old parents and he is to expend substantial amount on their medical treatment.

I have heard learned counsel for the parties.

There is no dispute that the respondents are minor sons of the petitioner. Much stress has been given by the petitioner that the respondents

are staying with their mother, who is financially well placed and is working as a teacher drawing higher salary than the petitioner and the petitioner has been ousted from the matrimonial home by the mother of respondents.

This Court finds that the respondents being biological sons of the petitioner, cannot be denied maintenance by the petitioner merely because the mother of the respondents is employed. Stress has been given that the income of the petitioner does not permit him to pay maintenance to the respondents as the petitioner is required to maintain his old parents for which sufficient amount is required for their medical treatment.

The admitted position which emerges is that the respondents are minor sons of the petitioner and pursuing their education and they are at very crucial stage of education. They are studying in well placed schools. Mere fact that the mother of respondents is earning more than the salary of the petitioner cannot absolve the petitioner of his responsibility to maintain his minor sons. The petitioner is employed in New India Assurance Company Limited, New Delhi. Thus, he is not incapable or incapacitated from earning.

The petitioner being father of the respondents is legally, socially and morally liable to maintain his children more specifically when they are pursuing their studies. Even if it is found that the mother of respondents is earning and the respondents are staying with their mother is not a sufficient reason for the petitioner to avoid his responsibility and duty to maintain his minor sons. A child for his/her upbringing does not require money only, but a lot of time and effort goes in upbringing of a child. It would be incorrect to hold that both the parents are equally responsible for expenses of the child. In fact, a mother, who has custody of a child not only spends money on the

upbringing of the child, but at the same time, she is required to spend substantial time and effort in bringing up the child. Her mobility is completely restricted. One cannot put value to the time and effort put in by the mother in upbringing of the child. No doubt, the mother, if she is earning, should also contribute towards the expenses of a child, but the expenses cannot be divided equally between the two.

Hon'ble Supreme Court in ***Bhuwan Mohan Singh Versus Meena (2015) 6 SCC 353*** has held as under:

“Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short “the Code”) was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the Court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life “dust unto dust”. It is totally impermissible. In fact, it is the sacrosanct duty to render the

financial support even if the husband is required to earn money with physical labour, if he is able bodied. There is no escape route unless there is an order from the Court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.”

Thus, noticing the fact that the respondents are none else, but the biological sons of the petitioner and they are at crucial stage of their education, this Court finds that the awarded maintenance is certainly not on higher side particularly when the cost of living is increasing day by day. The family Court has rightly held that the petitioner is liable to pay maintenance to the respondents regardless of the fact that their mother is also an employee.

Therefore, no interference is warranted with the impugned judgment dated 20.09.2019 passed by the family Court.

Accordingly, affirming the impugned judgment dated 20.09.2019 passed by the family Court, present criminal revision, being devoid of any merit, is dismissed.

October 23, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No