

107/A.

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

CRR(F)-247-2017 (O&M)

Date of decision:27.03.2019.

JYOTI

... Petitioner

Versus

RAJIV CHAUHAN

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Ashwani Gaur, Advocate,
for the petitioner.

Mr. Devinder Singh, Advocate,
for the respondent.

HARI PAL VERMA, J.

Through the present revision petition, the petitioner has impugned the order dated 15.04.2017 passed by the District Judge, Family Court, Gurugram and has sought enhancement/modification of the maintenance awarded by the Family Court.

Briefly stated, the petitioner-wife had filed a petition under Section 125 Cr.P.C. for grant of maintenance against the respondent-husband. It is the case of the petitioner that the marriage between the parties was solemnized on 06.05.2011 and out of this wedlock, no child was born to them. The respondent was an alcoholic, used to harass, humiliate and ill-treat the petitioner for want of dowry. Despite best efforts made by the petitioner, the respondent-husband and his family did not improve their behaviour and continued with their illegal demands. The petitioner was thrown out of the house on 23.06.2012 and since then, she had been residing

at her parental home. She has no independent source of income. The respondent is graduate from IIT Kanpur and M.Tech. from Italy. He was employed with Sergi India, Gurgaon at the annual package of Rs.8.5 lakh and in addition thereto, he is earning Rs.3.5 lakh per annum from tuition work. His father is a Government Contractor, earning about Rs.6 lakh per annum. The respondent has deliberately and intentionally deserted the petitioner. He is legally bound to maintain her more particularly when there is no other independent source of income with her.

The relationship and qualification are not denied by the respondent. The respondent admitted that he is an IIT graduate, but did not have a job and was earning from tuition. His annual income was Rs.3 to 3.5 lakh during the months of July to January, whereas from February to June, he did not have much income. He has no concern with the work of his father as a contractor. He was employed with Sergi India Company Limited till March, 2013. Since he had availed loan, he has to pay EMI of Rs.25,964/- per month. His business failed because of various complaints made by the petitioner against him. On the other hand, petitioner herself is running a Beauty Parlour in the name and style of Spark Beauty and SPA and is earning Rs.30,000/- per month.

The learned Family Court, while allowing the petition vide judgment dated 15.04.2017, observed as under:-

“9. It is evident from the above discussed evidence that the parties admit that they are residing separately and apart from the sum of Rs.3,000/- PM awarded to the petitioner as interim maintenance by this court, the respondent has not paid her any other amount for her sustenance. She has stated on oath that it was she who had been ousted by the respondent and his family

from the matrimonial home and she specifically asserted that she was living with her parental family. The respondent contends that he is unable to maintain the petitioner because of his own meager income. He himself admits that he is paying Rs.25,964/- as EMI and Rs.10,000/- as rent. His contention that the EMI is being paid from the amount advanced to him as loan is untenable because it is a well known fact that advance for business purpose is given by the Banks after assuring themselves of the financial soundness of the borrower. Apart from this there has never been any known default in repayment by the respondent which also indicates that he has sufficient funds to maintain himself besides making the repayment of EMIs.

10. Every man is required to maintain his wife in the standard in which he himself lives. In the instant case though the respondent is an IIT graduate, he claims that he does not have a suitable job and is only surviving on income generated from his tuitions. No documentary proof of the exact earnings of the respondent have been produced by him; but evidently his earnings are sufficient to provide him a rented house and other day to day amenities. This means that even on the lower side his monthly income must be taken to be Rs.30,000/- per month. This is being done as the petitioner also concedes that as on date the respondent is not in private employment but is doing his own work of tuitions. Though she has claimed that he earns in lakhs, she has been unable to place on record any documentary proof to indicate the same. This being the situation, the income of the respondent has to be assessed accordingly.

So far as the employment of the petitioner is concerned, she has stated on oath that she is unemployed though previously she had worked in the parlour of her sister-in-law for sometime. There is nothing on record to show that she is deliberately not generating income. The reliance placed upon

her alleged visiting card and photograph of the parlour board etc. do not proof that she is an earning hand. As such, it must be presumed that she is unemployed. It is undisputed that she is living with her parental family and merely because they are contributing to her maintenance, it does not exonerate the respondent from maintaining his legally wedded wife.

11. The petitioner has stated on oath that she was ousted from the matrimonial home for want of dowry. Aside from the bald denial on the part of the respondent there is no other cogent evidence to disprove her version. It is hardly likely that a married woman would jeopardies her marital life for no apparent reason. The respondent has also not furnished any reason for her allegedly leaving his home and hearth. Therefore it stands to reason that the plea of the petitioner that she has been thrown out for want of dowry is more plausible. The fact that the respondent had never contributed to her maintenance till directed by this court further fortifies her plea that he is neglecting and refusing to maintain her. Be that as it may, the petitioner is the primary responsibility of her husband-respondent. He is an able bodied person who is employed and is an earning hand. In fact he claims to be living independently and therefore, it must be presumed that he is sufficiently healthy to maintain himself. He is thus bound to take care of his wife who is unemployed and has no source of income. There is nothing on record to show that the petitioner has in any manner misconducted herself or made herself disentitled to claim maintenance from the respondent. As such it must be presumed that he had refused and neglected to maintain her as has been claimed by her. She is thus entitled to claim maintenance from him.”

Thus the petition filed by the petitioner was allowed by the Family Court on 15.04.2017 and it directed the respondent to pay a sum of

whereas for the period upto 31.03.2017, he was directed to pay maintenance to the petitioner @ Rs.3,000/- per month as awarded vide order dated 11.09.2015.

Dissatisfied with the aforesaid order dated 15.04.2017, the petitioner-wife has approached this Court by way of present revision petition.

Learned counsel for the petitioner-wife has argued that there was no cogent reason for the Family Court to award such a meagre amount of Rs.5,000/- per month as interim maintenance. The respondent-husband is a well qualified person, graduate from IIT Kanpur and has obtained his Master's degree from Italy. He is paying EMI of Rs.25,964/- per month. Therefore, the income of the respondent is much more than what has been considered by the Family Court. The respondent is also paying rent @ Rs.10,000/- and in addition thereto, he must be paying electricity and water charges. In this manner, inference can be drawn that he must be spending more than Rs.50,000/- per month on him, but this fact has not been considered by the Family Court while granting maintenance to the petitioner. The stand of the respondent that he 'does not have anything', cannot be accepted as earlier he was working with Sergi India Company and he, being well qualified professional, must be earning much more than what has been stated in the petition. No person can sustain for a longer period, particularly when his income is less than the expenses.

Learned counsel for the respondent-husband has argued that there is no averment in the petition filed under Section 125 Cr.P.C. wherein it is pleaded that the petitioner-wife is unable to maintain herself. Thus, in

liable to be dismissed. He has further argued that since the respondent is not earning, he has filed a petition i.e. CRR(F)-149-2018 for setting aside the order dated 15.04.2017 passed by the learned Family Court.

I have heard learned counsel for the parties.

The argument of the learned counsel for the respondent-husband that the petitioner-wife has nowhere pleaded in her application that she is unable to maintain herself, cannot be accepted. In para 15 of her petition filed by the petitioner under Section 125 Cr.P.C., there is a specific pleading that, *“thus the petitioner/complainant is facing great scarcity of funds and she has to arrange money for day to day expenses of household.”*

The averment made in this para gives no other meaning except that the petitioner is unable to maintain herself. Further, in the petition, it has been pleaded that the respondent is living luxurious life, whereas the petitioner has been living her life miserably. Therefore, this argument of the counsel for the respondent is totally misconceived and liable to be rejected. When the petitioner is facing scarcity of funds and she has to arrange money for day-to-day expenses, it leads to an inference that she is unable to maintain herself. Therefore, the requirements of Section 125 Cr.P.C. stand complied with. The respondent is a well qualified person, who did his graduation from IIT Kanpur and M.Tech. from Italy. He was working with Sergi India, Gurgaon at the annual package of Rs.8.5 lakhs. His father was a government contractor and even if it is considered that he is not rendering any service to his father, but considering his qualification from reputed institute and the package from the Sergi India, Gurgaon, this Court finds that the Family Court has not appreciated the financial condition of the petitioner vis-a-vis

per month and Rs.10,000/- as rent, his income cannot be less than Rs.50,000/- per month in any manner. Therefore, the maintenance awarded by the Family Court @ Rs.5,000/- per month w.e.f. 01.04.2017 and for the period earlier to 01.04.2017 @ Rs.3,000/- per month, certainly requires interference.

Considering the income of the respondent-husband, who is not only a well qualified person, rather his monthly EMI and rent being paid by him, his monthly income is not less than Rs.50,000/- per month. Apart from EMI amount of Rs.25,964/- and payment of Rs.10,000/- as monthly rent, he must be paying other charges i.e. electricity and water charges as well.

Accordingly, the petitioner is held entitled to maintenance @ Rs.10,000/- per month from 01.04.2017, whereas for the period before 01.04.2017, the amount of maintenance granted is not being interfered with.

With the above modification in the judgment dated 15.04.2017, the present petition is allowed.

(HARI PAL VERMA)
JUDGE

27.03.2019
sanjeev

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