

109.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR(F)-985-2019 (O&M)

Date of decision: 17.12.2019

JYOTI AND ANOTHER

... Petitioners

versus

GAGAN MALHOTRA

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Deepak Girotra, Advocate,
for the petitioners.

HARI PAL VERMA, J.

CRM-37164-2019

Prayer in this application filed under Section 5 of Limitation Act read with Section 482 Cr.P.C. is for condonation of delay of 15 days in filing the present revision petition.

For the reasons stated in the application, same is allowed and the delay of 15 days in filing the revision petition is condoned.

CRM-39135-2019

Prayer in this application filed under Section 482 Cr.P.C. is to place on record salary statement of petitioner No.1 as Annexure P-4.

For the reasons stated in the application, same is allowed and the document-Annexure P-4 is taken on record, subject to all just exceptions.

CRR(F)-985-2019

Petitioners i.e. wife and minor son, have filed the present revision petition against the order dated 09.08.2019 passed by learned Principal Judge, Family Court, Rohtak, seeking modification/enhancement of maintenance.

Briefly stated, the petitioners had filed a petition under Section 125 Cr.P.C. for grant of maintenance against the respondent-husband. The marriage between petitioner No.1-Jyoti and respondent-Gagan Malhotra was solemnized on 05.12.2014 and out of this wedlock, a son was born to them, who is arrayed as petitioner No.2-Kanha. Though huge amount was spent by the parents of petitioner No.1 in her marriage, but the respondent and his family members were not satisfied. They taunted and harassed petitioner No.1 for bringing insufficient dowry. She was also taunted for her small height and black complexion. On 17.01.2016, respondent and his family members gave beatings to petitioner No.1 and turned her out of matrimonial home. On 18.01.2016, her father came to her matrimonial home and after persuasions, he left her there. On the *chaula rasam* of newly born child on 21.01.2016, respondent and his family members raised a demand of Rs.10 lakhs so that respondent can start his business and also demanded gold. The father and other family members of petitioner No.1 asked for time, so as to fulfill their demands, but the respondent and his family members quarreled with them and turned petitioner No.1 out from the matrimonial home. Efforts for reconciliation were made, but the respondent's family refused to keep and maintain the petitioners. In this respect, petitioner No.1 gave a

complaint to the police and accordingly, an FIR No.81 dated 29.12.2016, under Sections 406, 498A, 506/34 of IPC, Police Station Women, Rohtak was registered against the respondent and his family members. Petitioner No.1 has no source of income, whereas respondent is working in a factory at Delhi as Accountant and getting salary of Rs.40,000/- per month. He is also owning movable and immovable properties. Therefore, she claimed for an amount of Rs.20,000/- per month as maintenance and Rs.33,000/- as litigation expenses.

Respondent denied the allegations and stated that no dowry was given at the time of marriage. No cash amount or car was demanded.

However, learned Family Court, while recording the finding that as the petitioner No.1 is earning handsomely being computer faculty in Government Girls Senior Secondary School, Rohtak, therefore, she is not entitled for maintenance, but petitioner No.2, who is the son of the parties, is staying away from the respondent due to matrimonial dispute, was held entitled for maintenance. While considering the income of the respondent as Rs.10,000/- per month, the learned Family Court awarded Rs.4,000/- per month as maintenance to petitioner No.2 from the date of filing of the petition.

Aggrieved against the aforesaid order, the petitioners have filed the present revision petition seeking modification/enhancement of the maintenance.

The petitioners have placed on record the salary certificate (Annexure P-4) of petitioner No.1 to contend that it is only in the months of

April and May, 2019, the petitioner has drawn Rs.15,000/- per month. Otherwise, her income has been Rs.10,000/- or less than Rs.10,000/- per month. In this manner, the impugned order requires modification and the maintenance awarded needs to be enhanced.

I have heard counsel for the petitioners.

The reasoning given by the learned Family Court denying maintenance to petitioner No.1 and allowing maintenance to petitioner No.2, reads as under:-

“It may be pointed out here that it is an admitted fact between the parties that the marriage of petitioner No.1 was solemnized with respondent on 5.12.2014 and out of the said wedlock, petitioner No.2 was born. However, there is specific plea on the part of respondent that petitioner No.1 (wrongly mentioned as petitioner No.2) is working and is earning. A document Mark P/S is existing on the file which is part of consolidated report regarding joining of computer teacher pertaining to month of March, 2017. The said document shows that petitioner No.1 joined as a computer faculty in Govt. Girls Sr. Sec. School, Rohtak Block, on 6th March, 2017. During the course of arguments, another document has been produced on the file showing attendance of petitioner No.1 in the said school on 2.8.2018. From these documents, it is clear that petitioner No.1 is working. But she intentionally withheld this information. Petitioner No.1 is earning handsomely being computer faculty in Govt. Girls Senior Sr. School, Rohtak. Therefore, she does not deserve any maintenance from the respondent. In view of this situation, there is no need of discussing other evidence regarding the main dispute between the parties. The maintenance under Section 125 Cr.P.C. is only given when the petitioner is not having any source of income,

but petitioner No.1 as referred above is working and is earning handsomely and thus, she is not entitled to claim maintenance from the respondent. However, petitioner No.2, son of the parties, is staying away from the respondent due to matrimonial dispute between petitioner No.1 and respondent. He being son of respondent is entitled to claim maintenance from him. Respondent, admittedly, is working in SAK Fabrics Okhla Industrial Area, Delhi. He has admitted his salary as Rs.10,000/- per month at page 3 of the reply. Since both the parents of petitioner No.2 are working, both have equal responsibility to maintain him. Petitioner No.1 is already taking care of petitioner No.2. In such eventuality, respondent is directed to pay Rs.4,000/- per month to petitioner No.2 from the date of filing of this petition. The petition, accordingly stands partly allowed. Memo of costs be prepared accordingly. File be consigned to the record room after due compliance.”

The marriage between the parties is not in dispute. At the same time, petitioner No.1-Jyoti is also working as a computer faculty in Government Girls Senior Secondary School, Rohtak since March, 2017. In the absence of any conclusive evidence so as to establish the income of the respondent, the learned Family Court has assessed the income of the respondent @ Rs.10,000/- per month and accordingly, awarded maintenance @ Rs.4,000/- per month to petitioner No.2.

The argument of counsel for the petitioners that it is only in April and May, 2019, the salary of petitioner No.1 was Rs.15,000/- and otherwise, till March, 2019, her earning was Rs.8,000/- per month, is of no relevance, as the income of the respondent-husband has not been assessed more than Rs.10,000/- per month. Even if it is assumed that the petitioner is

earning Rs.10,000/- per month with additional amount of maintenance awarded to petitioner No.2 @ Rs.4,000/- per month, her income will come around Rs.14,000/- per month.

No interference is thus made out.

Dismissed.

(HARI PAL VERMA)
JUDGE

17.12.2019
sanjeev

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