

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRR-3412-2019(O&M)

Date of Decision:18.12.2019

Shyama Sharma

.....Petitioner

Versus

Yogesh Sharma and others

.....Respondents

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

Present: Mr. Pratap Singh Gill, Advocate for
Mr. Aman Pal, Advocate,
for the petitioner.

HARI PAL VERMA, J.(Oral)

Petitioner has filed the present revision petition impugning the order dated 18.09.2019 passed by learned Additional Sessions Judge, Gurugram, seeking modification of the interim maintenance awarded to the petitioner.

Briefly stated, the petitioner has filed a petition under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter to be referred as the “D.V. Act”), so as to grant interim maintenance to her and learned Judicial Magistrate 1st Class, Gurugram, vide order dated 17.07.2018 while considering the fact that the petitioner is working as a lecturer in Megacosm Cognition Pvt. Ltd. (FIIT JEE Pvt. Ltd.) and earning gross pay of Rs.59,250/- (net income of Rs.43,300/- per month) has dismissed the application filed by the petitioner under Section 23 of the D.V. Act. The relevant paragraph of the order dated 17.07.2018 reads as

under:-

“Admittedly, there is no dispute with regard to solemnization of marriage between the parties to the petition. It has come on record that the petitioner is a working women and the petitioner has alleged that the respondent is working as an engineer at Nokia Company, Brazil. At this stage the allegations levelled by both the parties cannot be appreciated in depth as the parties are yet to lead evidence on merits. At the stage of fixing interim maintenance the documents relied upon by the parties has to be taken into consideration. From the perusal of the affidavit filed by the petitioner it is found that she is working as a lecturer in Megacosm Cognition Pvt. Ltd. (FIIT JEE Pvt. Ltd.) and is earning gross pay of Rs.59,250/- and net income of Rs.43,300/- per month. The petitioner has stated that she incurs monthly expenditure of Rs.52,611/- per month and she has sought monthly maintenance from the respondent to the tune of Rs.1,00,000/-. On the other hand the respondent No.1 has contended that he was working as an engineer at Brazil but due to personal litigation he could not join his duties at Brazil since November, 2017 and since then he has not been earning even a single penny. It has been brought to the notice of the court that the application for granting permission to go abroad to join duties of the respondent No.1 has been dismissed by the criminal court. Further, it has also come on record that a criminal case under Sections 498-A/406/323/34 IPC and a petition under Section 125 Cr.P.C. are also pending for adjudication between the parties. Not commenting upon the exact income earned by the parties, this court shall rely upon the affidavits placed upon the file by the parties as per which at present the respondent No.1 is jobless since November, 2017 whereas on the other hand the petitioner is earning an amount of Rs.43,300/- per month which is a reasonable amount for her sustenance. Moreover, the petitioner has placed on record a computer print out which only shows that the respondent No.1 has joined

Core Network Team, however, no date or any specific job profile is evident from this document. Except mere assertions, there is no document on record to show that the respondent No.1 is owner of various immovable properties, hence, it cannot be said that the respondent No.1 is earning any income from those sources as well. Prima facie, there is nothing on record to suggest that the petitioner is unable to maintain herself whereas it is to the contrary that the respondent No.1 is himself upon the mercy of others to maintain himself. Hence, the petitioner is not entitled to any interim maintenance and resultantly, the application for interim maintenance filed by the petitioner under Section 23 of DV Act stands dismissed.”

Against the order dated 17.07.2018, whereby interim maintenance was declined to the present petitioner by learned Magistrate, she has preferred a criminal appeal and vide judgment dated 18.09.2019, learned Additional Sessions Judge, Gurugram, has set aside the order dated 17.07.2018 passed by learned Magistrate, allowed the appeal and held the petitioner entitled to receive interim monthly maintenance @ Rs.30,000/- per month from the date of the judgment. The relevant discussion which led to awarding of interim maintenance reads as under:-

“During the course of arguments, learned counsel for the appellant brought to the notice of this court copies of various medical documents to substantiate his assertion that now-a-days the appellant is suffering not only from the depression but also from other medical problems. Documents shown to the court are of St. Stephens Hospital, New Delhi and Tirath Ram Hospital, New Delhi, which further justify the non-working by the present appellant now. The transactions in the Standard Chartered Bank and other banking transactions in the accounts of the present respondent no.1 at least prima facie prove that till dismissal of the application, he was drawing huge salary, which further proves his working capacity. It is

not believable that such highly qualified and technical person would remain unemployed even for a short period in today's time of the rising demand of such technical persons. Even during the course of arguments, learned counsel for respondent no.1 Yogesh Sharma has himself asserted that on 7.7.2018 he was not working, but he got the salary for the month of August in his bank account and earlier he got his salary from HUAWEI on 27.7.2018. Thus on the date, when he made statement in the court regarding his unemployment, he was working in HUAWEI. Though as per the account statement of respondent he received salary of more than Rs.1.80 lacs on 27.7.2018. Even if his take home salary is taken as Rs.90,000/- per month as asserted by learned counsel for the respondent no.1 Yogesh Sharma, it can be easily inferred that he misguided the learned Magistrate by his statement in July, 2018. During the course of arguments, no rebuttal to the assertion of appellant-complainant that she is unemployed and she is undergoing treatment for various illness has been made. Merely the bald assertion that she is intentionally not working is not sufficient for the respondent no.1 Yogesh Sharma to avoid his liability to maintain his wife i.e. present appellant. It is a settled principle of law that wife who is living separately from her husband due to domestic violence committed by her husband is entitled to the same standard of living as being enjoyed by her husband.

In the present case, no other liability of the respondent no.1 Yogesh Sharma has been proved. Even if his salary is taken as Rs.90,000/- per month and he may be living a lavish life style, the present appellant is entitled at least to a decent standard of living. The respondent no.1 is bound to maintain his wife.

No other point was urged or argued or survives for consideration.

As a sequel to the above discussion, the impugned order dated 17.7. 2018 passed by the learned Judicial Magistrate Ist

Class, Gurugram is hereby set aside and the appeal at hand is allowed to the effect that the appellant Shyama Sharma is entitled to receive interim monthly maintenance of Rs.30,000/- (Rs. Thirty thousand per month) from the respondent No.1 Yogesh Sharma during the pendency of the main complaint/application and respondent No.1 is directed to pay this interim maintenance allowance to the appellant Shyama Sharma from the date of this judgment. A copy of this judgment alongwith the record of learned trial court be sent back. Appeal file be consigned to record room.”

Learned counsel for the petitioner has argued that apart from the fact that the respondent has also challenged the impugned order dated 18.09.2019 passed by learned Additional Sessions Judge, Gurugram, before this Court by way of CRR-2854-2019 (Yogesh Sharma Versus Shyama Sharma), the awarded maintenance is too less for the survival of the petitioner for the reason that she is in depression and getting treatment from Safdarjang hospital.

Heard learned counsel for the petitioner.

Apart from the fact that the maintenance awarded by learned Additional Sessions Judge, Gurugram, is interim in nature, it cannot be ignored that the petitioner is not earning as discussed by learned Magistrate in his order dated 17.07.2018. Petitioner is working as a lecturer and her net salary is Rs.59,250/-, whereas income of the respondent has been assessed as Rs.90,000/- per month and it is on this basis, interim maintenance of Rs.30,000/- has been awarded to the petitioner. In this manner, total income of the petitioner comes to around Rs.90,000/- per month. Thus, this Court does not find any reason to interfere in the judgment passed by learned Additional Sessions Judge, Gurugram.

The argument of the learned counsel for the petitioner that she is not working, is not accepted at this stage as there is no such material on record to substantiate this argument. Moreover, during the course of trial, the matter would be adjudicated as to whether the petitioner is working or not working.

Dismissed.

December 18, 2019
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(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No