

110.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR(F)-1072-2019 (O&M)

Date of decision: 17.12.2019

ANJALI KASHYAP

... Petitioner

versus

BHARAT KASHYAP

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Tribhuvan Dahiya, Advocate, for
Mr. Sukhbir Singh Hooda, Advocate,
for the petitioner.

HARI PAL VERMA, J.

CRM-39743-2019

Prayer in this application filed under Section 5 of Limitation Act read with Section 482 Cr.P.C. is for condonation of delay of 37 days in filing the present revision petition.

For the reasons stated in the application, same is allowed and the delay of 37 days in filing the revision petition is condoned.

CRR(F)-1072-2019

Petitioner-wife has filed the present revision petition impugning the order dated 05.08.2019 passed by the learned Additional Principal Judge, Family Court, Faridabad, whereby her petition under Section 125 Cr.P.C. for grant of maintenance, was dismissed.

Counsel for the petitioner has argued that the petition has wrongly been dismissed without looking into the material on record. The

petitioner has no source of income and she has been abandoned by her husband-respondent and she is living a life of penury, whereas the respondent is bound to maintain her. The respondent has otherwise sufficient income of about Rs.1 lakh per month, which he is earning from the business of selling Ladies' clothes in weekly Bazaars in New Delhi and is a regular income tax payee. He has admitted his income of about Rs.25,000/- per month. The trial Court was swayed by the testimony of the respondent's witnesses, some of whom happen to be petitioner's relatives. Since there is no credible evidence on record to establish that the petitioner has any relation with Honey Nagia or any child has been born to them, the findings to the contrary recorded by the trial Court are without any basis or relevant material. In this manner, the trial Court has committed an error of law in relying upon a report prepared under Section 155(2) of Cr.P.C. against the petitioner on an application filed by the respondent in a court at Delhi.

I have heard counsel for the petitioner.

The petitioner has filed a petition under Section 125 Cr.P.C. for grant of maintenance allowance, claiming to be the wife of the respondent, having solemnized marriage on 24.03.2010 and Rs.8-10 lakhs were spent in the marriage, but the respondent and his family members were not satisfied with the dowry in the marriage. The respondent never supported the petitioner and many times on the instigation of his family members, he maltreated her. Even at the time of pregnancy, the life of the petitioner was made miserable on her refusal for physical relations due to pregnancy and weak health, the respondent maintained physical relationship with other

girls. She was also deprived of proper diet.

On notice, the respondent appeared and filed his written statement. He did not deny his relationship with the petitioner as his wife. He submitted that the petitioner had ran away with one Hunny Nagia as she was having illicit relations with him and when he complained to the police, the police only registered a missing report of the petitioner. He further submitted that the petitioner had given birth to one female child from the loins of said Hunny Nagia. Though the respondent admitted that he was running business of Ladies' Clothes in Weekly Bazaars, but denied that he was earning Rs.1 lakh per month.

Learned Family Court, while considering the evidence of the parties, has returned a finding that the brother and sister of the petitioner have stepped into the witness box to depose about the illicit relationship of the petitioner with Honey Nagia with whom she had eloped on 26.10.2014 and also gave birth to a child of Honey Nagia on 13.09.2016. Even the wife of Honey Nagia deposed on the same lines about the illicit relationship of her husband with the petitioner. The relevant discussion of the judgment reads as under:-

“13. On the other hand, if we peruse the evidence as produced by the respondent, it is seen that even the brother and sister of petitioner have stepped into the witness box to depose about illicit relationship of petitioner with Honey Nagia with whom she had eloped on 26.10.2014 and subsequently gave birth to a child of Honey Nagia on 13.09.2016. The wife of Honey Nagia also deposed on the same lines about the illicit relationship of her husband with the petitioner. The respondent himself

deposed in the witness-box and also brought on record the documents which included the testimony of witnesses in another petitions between the parties and between Honey Nagia and his wife Pooja Nagia. The said proceedings had taken place before the court and are the certified documents of the said proceedings and the present counsel of the petitioner was a counsel in those proceedings and the witnesses whose statements have been produced were cross-examined and to understand the dispute between the parties, the said documents certainly can be looked into.

14. In proceedings that took place between Pooja Nagia and Honey Nagia, some witnesses were examined including the statement of Manager Sonu Sangam Palace, Ex.RW6/1 wherein he said that the petitioner and Honey Nagia had taken a room together and stayed there. In Ex.RW6/2 the statement of HC Sandeep was recorded regarding the missing complaint got lodged by present respondent. In Ex.RW6/4, Dharmesh Clerk has deposed regarding the birth of a child where father was shown as Honey Nagia and mother was Anjali Nagia and said record was also produced on file, and the birth was taken place in Sarvodya Hospital. Documents relating to joining of a Gym were also produced where petitioner and Honey Nagia had joined the Gym and taken couple package as husband and wife. In Ex.RW6/6 the medical record of Sarvodya Hospital was produced about the birth of a child on 13.09.2016 where father was Honey Nagia and mother was Anajali and the document of the hospital showed these names as the parents of the child.

Since the petitioner was having adulterous relations with Honey Nagia, the learned Family Court has rightly declined her claim for maintenance.

In view of the discussions so made in paras 13 and 14 of the Family Court judgment, this Court also does not find any cause for interference in the judgment.

Dismissed.

(HARI PAL VERMA)
JUDGE

17.12.2019
sanjeev

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