

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

1) **CRM-M-11510-2017 (O&M)**
Decided on : 06.02.2020

Birinder Sandhu and another

... Petitioner(s)

Versus

Ramneek Sandhu

... Respondent(s)

2) **CRM-M-2420-2017 (O&M)**

Ramneek Sandhu

... Petitioner(s)

Versus

Birinder Sandhu and another

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. Rajiv Kataria, Advocate
for the petitioner(s) (in CRM-M-11510-2017),
for the respondent(s) (in CRM-M-2420-2017).

Mr. Vikas Bahl, Sr. Advocate with
Mr. Manbir Singh Batth, Advocate
for the respondent(s) (in CRM-M-11510-2017),
for the petitioner(s) (in CRM-M-2420-2017).

MANJARI NEHRU KAUL, J.

The instant petitions have been filed under Section 482 Cr.P.C.,
for quashing of the order dated 22.12.2016 (Annexure P-5) passed by the
Additional Sessions Judge, Chandigarh in Criminal Appeal No. 327 of
04.07.2016 as well as the order dated 09.06.2016 (Annexure P-1), passed by
the learned JMIC, Chandigarh in an application under Sections 18, 19, 20
and 22 of the Protection of Women from Domestic Violence Act, 2005 (for

brevity 'the 2005 Act'), filed by the respondent in complaint No. 98 of 2015 and dated 08.09.2015 under Section 12 of the 2005 Act.

It would be relevant to notice that order dated 09.06.2016 has been passed on the complaint filed by the respondent-wife (petitioner in CRM-M-2420-2017), whereby the Court below granted her interim maintenance in the sum of ₹ 35,000/- p.m. along with ₹ 30,000/- p.m. as rent for an alternate accommodation. Petitioner No.1-husband was further restrained by the Court below from alienating his share to the extent of 50% in House No. 165, Sector 18-A, Chandigarh. The Court below also ordered that once the payment in lieu of rent was received by the respondent-wife, she would have no right to continue staying in House No. 165, Sector 18-A, Chandigarh.

Both the parties impugned the order dated 09.06.2016 before the Court of Additional Sessions Judge, Chandigarh. During the pendency of the appeal, a settlement was arrived at between the parties, wherein, it was agreed vide statement dated 15.12.2016, that the wife would only seek accommodation in the shared household, to which the petitioner-husband too was agreeable. Thereafter, the settlement, which was arrived at between the parties on 15.12.2016, formed the basis of the order passed by the Additional Sessions Judge, dated 22.12.2016, whereby, the appeal filed by the petitioner-husband was dismissed as withdrawn. In the appeal preferred by the wife, a detailed order dated 22.12.2016 was passed, whereby, the wife was held entitled to the use of one bedroom along with an attached bathroom and an already existing kitchen and the husband was restrained from interfering in the said portion of the house, where the wife along with the

child was supposed to live. Interim maintenance was also enhanced from ₹ 35,000/- to ₹ 40,000/- p.m.

Learned counsel for the petitioner-husband has challenged the maintenance of ₹ 40,000/- p.m. that was awarded to the respondent-wife on the ground that the complaint under the Domestic Violence Act, 2005 is not maintainable and false allegations had been levelled against the petitioners. It has been vehemently argued that the Court below erred in ordering that the respondent-wife be given a highly disproportionate benefit by ignoring that in fact the house was a joint property of the petitioner and his brother in equal shares and as such the petitioner had only a share in the household. It was further argued that the said joint property had not even been partitioned by metes and bounds. Hence, she could not have been given the exclusive possession of one bedroom along with an attached bathroom and an already existing kitchen.

Learned counsel for the wife on the other hand has *inter alia* challenged the maintainability of the petition on the ground that the impugned order was a consent order, based on the statement/settlement dated 15.12.2016, which was arrived at between the parties and pursuant to which the petitioner had withdrawn his appeal before the Additional Sessions Judge. It has also been submitted that the respondent is entitled to the enhanced amount of maintenance on the ground that the husband is financially very sound, as would be evident from the list of properties owned by him. It has further been urged that the respondent, on the other hand, has no independent source of income and is only dependent on the meagre amount of ₹ 40,000/-, which has been awarded as an interim measure by the

Court below and which is insufficient to defray the day to day expenses including the education expenses of the child. It has been pointed out by referring to Annexure P-13 (CRM-M-2420-2017) that the husband is still leading a luxurious life and thus, the wife is also entitled to enjoy the same status, which she was enjoying when living with the husband.

I have heard learned counsel for the parties and have perused the impugned orders as well as the other material on record.

There cannot be any dispute that a settlement was indeed arrived at between the parties, pursuant to which petitioner No.1-husband withdrew his appeal before the Additional Sessions Judge. It is also a matter of record that as per the settlement, the husband was to provide the wife with the accommodation i.e. one bedroom along with an attached bathroom and an already existing kitchen. In this background, the husband-petitioner cannot now be permitted to challenge the order dated 22.12.2016 on the ground that the accommodation was wrongly ordered to be given to the wife as the partition of the said house had not been effected by metes and bounds. It is the own case of the husband that he is 50% shareholder in the house in question and admittedly, parties had resided there subsequent to their marriage in the year 2004 and as such, in the opinion of this Court and in terms of Section 17 of the Domestic Violence Act, 2005, the wife has a right to reside in House No. 165, Sector 18-A, Chandigarh, which can be said to be a shared household in terms of Section 2(s) of the Domestic Violence Act, 2005.

Coming to the challenge of both the parties *qua* the maintenance so awarded, the same does not warrant any interference, as it goes without

saying that the wife would be entitled to the same standard of living, which she was enjoying while living with the petitioner-husband. Since the wife has already been provided with accommodation in the house in question along with ₹ 40,000/- p.m., as maintenance, there is no ground made out for enhancing the same.

Consequently, both the petitions stand dismissed.

(MANJARI NEHRU KAUL)
JUDGE

February 06, 2020

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No