

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

Crl. Misc. M 9956 of 2016 (O&M)
Date of decision: 15.1.2020

Smt. Shashi Devi and another

...Petitioners

Versus

Gurcharan Singh @ Charan Singh

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Jitender Singh Saharan, Advocate,
for the petitioner.

Mr. GC Shahpuri, Advocate, with
Ms. Gurdeep Kaur, Advocate, for
the respondent.

JAISHREE THAKUR, J. (Oral)

1. At the outset, learned counsel for the respondent has placed on record copy of the order dated 6.5.2019, whereby the Decree-holder, petitioner herein has made a statement that she has received ₹26,400/- from the judgment debtor respondent herein and nothing survives in the execution petition. Thus order dated 21.2.2019 stands complied with.

2. This a petition that has been filed under Section 482 of the Code of Criminal Procedure for modifying the order dated 2.2.2016 passed by the Sessions Judge, Yamuna Nagar at Jagadhri, whereby the maintenance payable to petitioners No.1 and 2 has been reduced from ₹2,000/- per month each to ₹1,200/- and ₹1,000/- per month respectively.

3. In brief, the facts are that marriage of petitioner No.1 was solemnized with the respondent on 23.6.2003 and out of this wedlock a

daughter namely Nidhi petitioner No.2 herein was born. It is averred that the petitioner No.1, along with her minor daughter, left the matrimonial home in the month of May, 2009 since petitioner No.1 was subjected to cruelty and harassment on account of demand of dowry etc. The petitioners having no source to maintain themselves filed a petition under Section 125 of the Code of Criminal Procedure for grant of maintenance at the rate of ₹8,000/- per month. It was averred that the respondent is doing agricultural work and also running a milk dairy and is earning ₹12,000/- per month from all sources.

4. The petition was contested by the respondent by filing a reply, wherein the demand of dowry was denied. It was averred that the respondent has got no independent income of his own but was earning about ₹3,000/- per month by doing manual work. The respondent is ready and willing to keep and maintain the petitioners at his house and he never refused to keep and maintain them.

5. In support of the claim made in the petition, petitioner No.1 herself stepped into the witness box as PW2 and also examined Jitender Kumar as PW1. On the other hand, the respondent examined himself as RW1 and closed the evidence.

6. The Judicial Magistrate 1st Class, Yamuna Nagar at Jagadhri, after appreciating the evidence brought on record, held that it has come on record that the respondent is a labourer by profession and used to work on the agricultural fields and there is one agricultural land, which is jointly owned by the respondent and his two other brothers measuring half acre and said land has also been given on rent/batai, which yield ₹6,000/- per annum and therefore, held by order dated 4.10.2014 that the petitioners are entitled

to receive an amount of ₹2,000/- each as maintenance allowance from the respondent. Aggrieved against the order, the respondent herein filed a criminal revision, in which order dated 4.10.2014 was modified and it was held that petitioners would be entitled to ₹1200/- and ₹1,000/- respectively. Aggrieved against the order, the instant petition has been filed.

7. Learned counsel for the petitioners submits that the impugned order as passed by the Sessions Judge, Yamuna Nagar is not sustainable, while submitting that it is moral and statutory duty of the respondent-husband to maintain his wife and the child.

8. Per contra, learned counsel appearing on behalf of the respondent submits that since the petitioners were not able to prove the earning of the respondent, as claimed by them, the learned Sessions Judge has rightly reduced the amount of maintenance payable to the petitioners.

9. I have heard learned counsel for the petitioners and have also perused the pleadings as well as both the orders as passed by the courts below.

10. No doubt, Section 125 of the Code of Criminal Procedure was enacted as a social measure to put an end to the agony, anguish, financial suffering of a woman who left her matrimonial home for no fault of hers and who does not have any sufficient means to support herself, so that some suitable arrangements can be made by the Court for her to sustain herself and also her children. These proceedings are in the form of summary in nature and the matter has to be decided on the basis of some averments/pleadings/documents supported by the parties. However, the

Courts, while deciding the quantum of maintenance to be awarded to the

wife have to balance the equities between the parties. It is settled law as held by the Apex Court in a catena of decisions that the concept of sustenance does not necessarily mean to live the life in penury and roam around for basic maintenance. The wife is entitled in law to lead a life in the same manner as she would have lived in the house of her husband with respect and dignity.

11. As contended by the petitioners, the respondent is a able bodied person and is capable of doing labour work. The minimum wages for an unskilled worker in the State of Haryana in the year 2016 was ₹8070/-, which might have been increased by now on account of inflation. In this view of the matter, the amount of maintenance as awarded by the Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri was not on the higher side, considering that there are two persons to be maintained, one of them being a minor who has to be educated.

12. For the afore-stated reason, the instant petition is allowed. The order passed by the Sessions Judge, Yamuna Nagar dated 2.2.2016 is set aside and that of the Judicial Magistrate Ist Class dated 4.10.2014 is restored.

15.1.2020

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No