

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: February 25, 2020

1. CRR-F-187-2016 (O&M)

Raj Kumar

... Petitioner

VERSUS

Ritu

... Respondent

2. CRM-M-14002-2017 (O&M)

Raj Kumar

... Petitioner

VERSUS

Ritu

... Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present Mr. Vivek Khandwal, Advocate
for the petitioner.

Respondent in person along with
Mr. Amaninder Preet, Advocate as Amicus Curiae.

JAISHREE THAKUR, J.(Oral)

1. The petitioner herein seeks to challenge two orders by way of filing the present revisions as the maintenance has been allowed @ ₹5000/- per month by an impugned order dated 20.01.2016 under Section 125 Cr.P.C. passed by the District Judge, Family Court, Rohtak and impugned order dated 16.11.2016 passed by Addl. Sessions Judge, Rohtak affirming

order dated 17.03.2016 passed by the JMIC, Rohtak whereby maintenance @ ₹7000/- per month has been allowed in proceedings initiated under Section 12 of the Protection of Woman from Domestic Violence Act, 2005.

2. Since the facts are common, this Court proposes to dispose of these two petitions by this common order.

3. In brief, the facts as stated are that a marriage was solemnized between the petitioner and the respondent on 20th January 2010 as per Hindu rites and ceremonies at Rohtak and out of the said marriage no child was born. Dispute arose between the parties and it was alleged that the respondent/complainant-wife was thrown out of her matrimonial home on 20th April 2010 i.e. within a period of 3 months of the marriage on account of not bringing adequate dowry. Consequent to that, she filed petition under Section 125 Cr.P.C. claiming maintenance, which was allowed vide order dated 20.01.2016 passed by the Family Court, Rohtak @ ₹5000/- per month from the date of filing of the application, which order has been challenged in the High Court by filing CRR (F)-187-2016, whereas she also filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 which was decided by the JMIC, Rohtak on 17th March, 2016 by holding that the respondent herein would be entitled to maintenance @ ₹7000/- per month from the date of filing of the application with a further direction to the petitioner not to commit any act of domestic violence in future.

The order passed by the JMIC, Rohtak was appealed before the Additional Sessions Judge, Rohtak by the petitioner herein but the same was

dismissed. However, while dismissing the appeal it was clarified that the respondent-wife could claim maintenance only in one form of litigation against the husband either under Section 125 Cr.P.C. proceedings or proceedings as allowed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 .

4. It is an admitted fact that the respondent in both these petitions is a legally wedded wife of Raj Kumar, the petitioner herein. The marriage did not survive the test of time which resulted in a petition being filed under Section 125 Cr.P.C., which was allowed, holding the petitioner liable to pay an amount of ₹5,000/- per month as maintenance and in the second petition filed under Section 12 of the Protection of Women from Domestic Violence Act 2005, he was ordered to make a payment of ₹7,000/- per month towards maintenance with the stipulation that the respondent-wife could not claim under both. The respondent-wife has not challenged the order passed under the Domestic Violence Act, whereby the Court has held that she will be entitled to claim maintenance only in one form against the husband either under Section 125 Cr.P.C. proceedings or under Section 12 of the Protection of Women from Domestic Violence Act, 2005 .

5. Both the Courts below in both separate proceedings have returned categorical finding that there is no evidence available on the record which would substantiate petitioner's earning. The respondent-wife was not able to substantiate her plea that the petitioner herein was a man of means and has a shop of readymade garments at Gandhinagar, Delhi and earning ₹60,000/- per month nor was the petitioner herein able to establish the fact that the respondent-wife was earning more than ₹10,000/- per month by

doing sewing and tailoring work and had sufficient means to support herself. The petitioner herein also was not able to establish that he was suffering from tuberculosis and therefore, incapable of earning a living for himself. He did not produce any evidence on the record by examining a doctor to prove the factum of his illness. Both the Courts allowed maintenance to be paid i.e. ₹ 5000/- per month in the proceedings initiated under Section 125 Cr.P.C. and ₹7000/- per month in the proceedings under Protection of Women from Domestic Violence Act, 2005.

6. It is also worthwhile to note that the respondent-claimant had got an FIR No. 07 dated 06.01.2011 registered under Section 498-A and 406 IPC at Police Station Civil Lines, Rohtak, in which proceedings the petitioner herein has been acquitted and the appeal against him has been filed by the State stands dismissed, therefore, in these proceedings the only question before this Court would be to the quantum of maintenance that ought to be allowed to the respondent-wife keeping in view that there is no direct evidence regarding his financial capacity and his income. Thus it is for the Court to make a rough estimate as to what he would be earning and his liability to pay maintenance.

7. In a judgment rendered by the Supreme Court in '*Shome Nikhil Danani vs. Tanya Banon Dani, 2020 CrL L.R. (SC) 103*', the Supreme Court has categorically held that mere passing of an order under Section 125 Cr.P.C. would not preclude the wife from seeking appropriate relief in proceedings initiated under Protection of Women from Domestic Violence Act. This was the view taken by the Delhi High Court in proceedings arising between the same parties. No doubt relief can be

claimed in proceedings under Protection of Women from Domestic Violence Act, 2005 as well as in the proceedings under Section 125 Cr.P.C. but it is a duty cast upon the Court to see what would be the earnings of the husband and his capacity to pay the maintenance. Be it in proceedings under Section 125 Cr.P.C. or under the Protection of Women from Domestic Violence Act, there has to be some evidence available on the record to establish the earnings/income of the husband.

8. In the instant case, it is an admitted fact that there is nothing available on the record to establish the income of the petitioner herein and, therefore, this Court has to make a rough estimate as to what his income could be. It has not been established that he is owning a readymade garments shop at Gandhi Nagar, New Delhi, and therefore, at best it could be held that he was earning some income as a skilled worker i.e. he was earning approximately ₹12000/- as a daily wager in the year 2016 when the petition was filed.

9. The Family Court in the proceedings under Protection of Women from Domestic Violence Act has held the respondent entitled to ₹7000/- per month which in the opinion of the Court, is on the excessive side. At best, the complainant would be entitled to a thumb rule payment of 25% of his income, which would be in consonance with the judgment rendered in '*Kalyan Dey Chowdhary vs. Rita Dey Chowdhary Nee Nandy 2017 (2) RCR (Civil) 1033*'.

10. Consequently, in the opinion of this Court, the respondent would be entitled to the same maintenance as has been allowed by the JMJC, Rohtak under Section 125 Cr.P.C. i.e. ₹5000/- per month only.

11. Petitions stand disposed of accordingly.

February 25, 2020

(JAISHREE THAKUR)
JUDGE

seema

Whether speaking/reasoned	Yes
Whether reportable	No