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

CRR(F) No.26 of 2017 (O&M)
Date of Decision: March 18, 2020

Aarti Gupta and another

...Petitioners

Versus

Sunit Kumar Gupta

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Anuj Balian, Advocate
for the petitioners.

Mr. Ankur Mittal, Advocate
for the respondent.

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JAISHREE THAKUR, J.

1. The instant criminal revision has been filed by the petitioners seeking to challenge the order dated 12.10.2016 passed by the Family Court, Ambala whereby, petitioner No.1-wife has been allowed maintenance @ ₹ 2000/- per month from the date of filing of the petition till the period she remained out of job whereas, petitioner No.2-minor son has been allowed maintenance @ ₹ 2000/- per month from the date of filing of the petition, on the ground that the same is meager and insufficient.

2. In brief, the facts of the case are that a marriage was solemnized between petitioner No.1-Aarti Gupta and respondent-Sunit Kumar, out of which wedlock petitioner No.2-minor child was born. On account of differences that arose between the parties to the marriage, they

started residing separately and a petition claiming maintenance was filed under Section 125 Cr.P.C. by the wife for herself as well as on behalf of the minor child, aged 06 years in the year 2013. It was alleged that petitioner No.1-wife was doing a job of Guest Teacher and was not earning sufficiently to support herself and the minor child whereas, respondent-husband, who was a Chartered Accountant by profession, was earning about ₹ 1 lac per month. The petitioners had prayed for maintenance @ ₹ 50,000/- per month.

3. The said petition filed under Section 125 Cr.P.C. was contested by the respondent herein by alleging that it was petitioner No.1-wife herself, who had willingly deserted him, while pleading that petitioner No.1 was getting a salary of ₹ 15,840/- per month, besides interest from the bank deposits whereas, his gross total income was ₹ 1,71,245/- per annum. It was further alleged that petitioner No.2-minor child had been adopted by the brother of petitioner No.1-wife and was residing with them, while contending that the said adoption was without his consent.

4. Evidence was adduced by both the parties in support of their pleadings. Petitioner No.1-wife herself stepped into the witness box as Ex.PW1 and tendered documents Ex.P1 to Ex.P15, Ex.P18 to Ex.P67 and Mark P-1 to Mark P-56 into evidence. Since, she failed to conclude her evidence despite availing more than three effective, her remaining evidence was closed by court order. Thereafter, respondent himself stepped into the witness box as RW1, apart from examining Vikas Jain, Tax Assistant, Income Tax Department, Kurukshetra as Ex.RW2 and SI Sukhbir Singh, SP Office as RW3.

5. The trial court took note of annual income of the respondent for the assessment year 2015-2016, which comes to ₹ 1,94,710/- per annum (₹16,226/- per month) but relied upon the statement of the respondent dated 22.12.2015 wherein he admitted that his monthly income is ₹ 19,000/- per month. So far as the income of petitioner No.1-wife is concerned, the trial court took note of the statement given by petitioner No.1-wife dated 06.05.2016 wherein she stated that she had not given her son to anyone in adoption and that she was working as guest teacher and getting salary of ₹ 21,000/- per month and she had been relieved w.e.f. 31.03.2016. But the trial court in para 10 of its order has observed that subsequent thereto she has been again appointed as guest teacher by appointment letter No.DEEO-126 dated 19.08.2016 and getting a salary of ₹ 21,000/- per month. On appreciating the evidence adduced by the parties, the trial court came to hold that petitioner No.2-minor child is entitled to maintenance @ ₹ 2000/- per month from the date of filing of the petition whereas, petitioner No.1-wife is entitled to maintenance @ ₹ 2000/- per month, only for the period during which she remained out of the job. A liberty was also given to petitioner No.1 to re-approach the court for fixing of her maintenance allowance or its enhancement, as the case may be, in the eventuality of her becoming out of the job. Aggrieved against the said order, the petitioners herein have filed the instant criminal revision.

6. Learned counsel appearing on behalf of the petitioners would argue that the court below has failed to appreciate the true income of the respondent-husband. It is submitted that the gross receipt of the respondent-husband for the financial year 2014-2015 was ₹ 5,53,773/- whereas his net

income has been taken into consideration as ₹ 1,94,710/-. It is argued that the income tax return, which reflects the income of ₹ 2/3 lacs, has been manipulated and, therefore, the petitioners would be entitled to enhancement of maintenance.

7. Per contra, counsel for the respondent submits through the written submission that petitioner No.1 being well qualified with degrees of M.A., B.Ed., M.Ed., and HTET, is currently working with the Education Department Haryana on permanent basis and status of her job has been confirmed by the Government of Haryana vide a legislation No.13/2019 (Haryana Guest Teachers Service Act, 2019). It is submitted that petitioner No.1 is presently withdrawing salary of ₹ 32,400/- per month, which is subject to revision and, therefore, she would not be entitled to any maintenance from the respondent. It is also contended that income tax return of the respondent for the assessment year 2017-18 would reflect that the gross total income of ₹ 2,18,793/-, income tax return for the assessment year 2018-19 would reflect the gross total income of ₹ 2,24,887/- and income tax return for the assessment year 2019-2020 would reflect the gross total income of ₹ 2,41,752/-. It is mentioned that amount of maintenance allowed to the minor child @ ₹ 2000/- per month is being paid.

8. I have heard counsel for the petitioners and have also gone through the written submissions filed by counsel for the respondent, apart from perusing the pleadings of the case.

9. The instant criminal revision has been filed by petitioner No.1-Aarti Gupta and petitioner No.2-Akshit Gupta (minor through his natural guardian and mother i.e. petitioner No.1) seeking to challenge the order

dated 12.10.2016 passed by the Family Court, Ambala. However, during the pendency of these proceedings, on 13.02.2017 counsel for the petitioners did not press the instant criminal revision qua the amount of maintenance towards petitioner No.1 during the period she was doing her job, however, had sought to argue the criminal revision qua petitioner No.2-minor son. Consequently, the notice was issued to that limited extent.

10. The respondent herein has not been able to prove the fact that the minor child has been given in an adoption to the brother of petitioner No.1 herein. The factum of marriage between the parties is not in dispute nor is the fact that a child was born out of this wedlock, as such, the respondent herein is duty bound to take care of the well being, education and other daily expenses of petitioner No.2. Petitioner No.1 herein got a job as against guest teacher, but the record does not reveal the date as to when she was given said appointment. Needless to say, this is also the responsibility of the respondent to maintain his wife, in case, she is not able to do so. Provisions of Section 125 Cr.P.C. would come to the rescue of the wife in such a situation. Therefore, there is no infirmity with the said order of the Family Court directing the respondent to pay her maintenance @ ₹ 2000/- per month from the date of filing of the petition, only for the period during which she remained out of the job. However, the question whether the Family Court has erred in allowing only ₹ 2000/- per month to petitioner No.2-minor child is a question that needs to be addressed.

11. As per the income tax return of the respondent for the assessment year 2015-16, he was earning a sum of ₹16,226/- per month, however, by his separate statement recorded on 22.12.2015, he admitted his

income to be ₹ 19,000/- per month. As per the income tax returns available on record of the respondent, during the assessment year 2017-18 the respondent was earning ₹ 17,400/- per month, during the assessment year 2018-19 the respondent was earning ₹ 17,907/- per month and during the assessment year 2019-2020 the respondent was earning ₹ 19,312/- per month. In the opinion of the court, amount of maintenance allowed to petitioner No.2-minor child at the rate of ₹ 2000/- per month deserves to be enhanced, keeping in view the increase in the high cost of living, educational expenses and other day-to-day needs of the minor child. It is also equal responsibility of both the parents to bring up the minor child and the contribution towards the same needs to be equal. The mother is providing home, food, education and other incidental expenses to the minor child and under these circumstances, taking the income of the respondent, the amount of maintenance as payable to petitioner No.2-minor child is enhanced from ₹ 2000/- per month to ₹ 5000/- per month.

12. The criminal revision stands allowed accordingly.

(JAISHREE THAKUR)
JUDGE

March 18, 2020
vijay saini

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