

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

CR-1246-2021 (O&M)  
Date of Decision:- 08.07.2021.

Kamal @ Kamlesh

.....Petitioner

Versus

Silochana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE VIKAS BAHL**

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Argued by:- Mr. Ajay Arora, Advocate for the petitioner.

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**VIKAS BAHL, J. (Oral)**

**CM-5207-CII-2021**

This is an application under Section 151 of C.P.C. for exemption of certified/true typed copy of the judgment dated 19.02.2021.

In view of the averments made in the application, same is allowed and the petitioner is exempted from annexing certified/typed copy of judgment dated 19.02.2021.

**CR-1246-2021 (O&M)**

Challenge in the present revision petition is to the order dated 19.02.2021 *vide* which the Principal Judge, Family Court, Sirsa, has partly allowed the application filed by the respondent-wife with the direction to

the petitioner-husband to pay ₹ 5,000/- per month to the respondent i.e., ₹ 3,000/- per month for respondent and ₹ 2,000/- for son Rakshit from the date of filing the application i.e., 24.04.2019. The petitioner has also been directed to pay a lump sum amount of ₹ 5,500/- to the respondent as litigation expenses.

An application under Section 24 of the Hindu Marriage Act was filed by the respondent-wife seeking maintenance *pendente lite* worth ₹ 30,000/- per month and lump sum amount of ₹ 11,000/- as litigation expenses from the petitioner-husband. The petitioner-husband had filed a petition under Section 13 of the Hindu Marriage Act for dissolution of marriage and it is during the pendency of the said proceedings that the said application under Section 24 was filed by the respondent-wife. It is an admitted fact between the parties that the marriage was solemnized on 06.03.2011 and from the wedlock, Rakshit was born in February, 2017, who is residing with the respondent-wife and that the parties had been residing separately since February, 2017.

In the application under Section 24, the respondent-wife submitted that she had no source of income. It has further been stated that the petitioner-husband is young and able bodied person and the petitioner and his family is having 25 *bighas* of land in Rajasthan and they are earning ₹ 5,00,000/- per annum from the above-said land. In the reply filed to the same, the petitioner-husband has denied having any source of income. However, the fact that the respondent-wife has no source of income has not

been disputed by the petitioner-husband, either before the learned trial Court or even before this Court. The petitioner-husband has admitted in his affidavit submitted before the learned trial Court that his father was having 28 *kanals* of land. The learned trial Court/Family Court after considering all the above said aspects, had partly allowed the application in the terms as stated herein-above.

The learned counsel for the petitioner-husband has raised two submissions. The first submission raised by the learned counsel is that he has no source of income. The second submission made by the learned counsel for the petitioner is that the petitioner had filed an application under Section 9 of the Hindu Marriage Act against the respondent for restitution of conjugal rights and a decree for restitution of conjugal rights was passed in favour of the petitioner *vide* judgment and decree dated 26.11.2018 and even thereafter, the respondent-wife did not join the petitioner-husband in the matrimonial home. It is, thus, submitted that it is the respondent who is not willing to come back to the petitioner. It is the argument of the learned counsel for petitioner that in view of the above two arguments, the impugned order deserves to be set aside.

This Court has considered both the above-said arguments but has found the same to be meritless. It has not been disputed either before the learned Family Court or before this Court that the respondent-wife has no source of income. The factum of the petitioner-husband being able-bodied is also not denied. It has been admitted in the affidavit that the father of the petitioner is having 28 *kanals* of land.

This Court in the case titled as “Amit Sharma Vs. Meenakshi” reported as 2017 (2) R.C.R. (Civil) 875, has categorically held that where the husband is able bodied, then his mere plea that he was not doing a job and he has no means to pay cannot be accepted to deny the maintenance to the wife. In the said case, an amount of ₹ 10,000/- maintenance per month besides litigation expenses, was upheld. The relevant portion of the said judgment is reproduced herein-below:-

*“The present revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 09.10.2015 (Annexure P-5) passed by Additional District Judge, Panipat, whereby, the application filed by the respondent under Section 24 of the Hindu Marriage Act, 1955 (for short 'the Act, 1955') has been allowed and the petitioner was directed to pay maintenance @ ₹ 10,000/- per month besides litigation expenses to the respondent.*

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*Learned counsel for the petitioner submits that the amount of maintenance is on the higher side whereas there was no evidence to prove that the petitioner was having income from rent. Learned counsel further submits that the mother of the petitioner is widow, old aged lady and is suffering from various*

*ailments. Not only she needs financial support but care also by considering her old age as there is no other family member to look after her. Learned counsel also submits that the respondent-wife is well educated and possessing degree of M.A. B.Ed. and is also earning handsome amount by way of giving tuitions to the students at home but this aspect has not been considered. The respondent-wife has also filed an application for grant of maintenance under Section 125 Cr.P.C. before the Court at Delhi, which is still pending. At the end, learned counsel for the petitioner submits that the petitioner is not earning any amount and as such, the maintenance be reduced to some reasonable amount.*

*XXXX---XXXX---XXXX*

*Where there was sufficient means in the family of the husband on the strength of which the husband got married he has to share the burden to support his wife during the course of annulment of such marriage.*

*XXXX---XXXX---XXXX*

*It is also well settled that it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife*

*due to financial constraints as long as he is capable of earning.*

*XXXX---XXXX---XXXX*

*In **Shamima Farooqui vs. Shahid Khan, 2015(2) RCR (Criminal) 526**, it has been held by Hon'ble the Supreme Court that plea of husband that he is not doing job and has no means to pay, cannot be accepted to deny the maintenance as these are only bald excuses. In case the husband is healthy, able bodied and is in a position to support himself, he is under legal obligation to support his wife as well. Hon'ble the Supreme Court has gone to the extent in saying that it is the obligation of the husband to maintain his wife and he cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.*

*XXXX---XXXX---XXXX*

*It is unbelievable that an able bodied person is not in a position to earn anything. There is nothing on record to show that the respondent wife is having any independent source of income. In today's time for meeting out the day-to-day expenses and to look after the minor child, an amount of ₹ 10,000/- cannot*

*be said on the higher side.*

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*In view of the facts and law position as discussed above, there is no merit in the contentions raised by learned counsel for the petitioner and no interference is required in the impugned order. Accordingly, the present revision petition being devoid of any merit is hereby dismissed.”*

A perusal of the above judgment would show that the facts of the present case are higher in favour of the respondent-wife than in the above-said case and still an amount of ₹ 10,000/- per month was granted as maintenance. In the above said case, it was also argued that the husband had an old mother to look after and the respondent-wife therein was well educated and possessing degree of M.A. B.Ed., in addition to the point that the husband was not earning any amount. However, this Court by relying upon the judgment passed by the Hon'ble Supreme Court in **Shamima Farooqui Vs. Shahid Khan, 2015 (2) RCR (Criminal) 526**, held that in case the husband is able bodied, the plea of the husband that he was not doing any job and had no means to pay cannot be accepted to deny the maintenance, as these were only bald excuses.

As regards the second contention, it is relevant to mention that even as per the case of the petitioner-husband, subsequent to the order passed under Section 9 of the Restitution of Conjugal Rights, the petitioner-

husband has filed a petition under Section 13 of the Hindu Marriage Act for dissolution of marriage, which is still pending. It is settled law that during the pendency of proceedings, including the proceedings for divorce under Section 13 of the Hindu Marriage Act, an application under Section 24 of the Hindu Marriage Act is maintainable. The learned Family Court has considered all the ingredients in the right perspective and has granted a maintenance of ₹ 5,000/- per month. The impugned order has been rightly passed and calls for no interference much less, be set aside merely on the plea that earlier an application under Section 9 of the husband was allowed, moreso, when the petition under Section 13 is still pending and only an amount of ₹ 5,000/- has been awarded to the respondent-wife. Out of the said amount of ₹ 5,000/-, ₹ 2,000/- has been awarded for the son Rakshit. In the present times, the said amount is very paltry and it is with great difficulty that the respondent and her son will be able to make both ends meet and, thus, the same cannot even remotely be stated to be on the higher side.

Thus, finding no merit, this petition is dismissed.

**(VIKAS BAHL)**  
**JUDGE**

**July 08, 2021.**

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.