

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

(116)

**CRR(F)-267-2022 (O&M)
DATE OF DECISION:- 30.05.2022**

VISHNU

...PETITIONER

VERSUS

JAIWATI AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Rajesh Kapila, Advocate for the petitioner.

SUVIR SEHGAL, J. (ORAL)

CRM-14064-2022

Noticing the prayer made in the application, it is allowed.

Hearing of the main case is preponed from 08.08.2022 to today and it is ordered to be taken up on Board.

Main case

Instant revision petition has been filed under Section 401 of the Code of Criminal Procedure, 1973 (for short “the Code”) impugning order dated 11.02.2021 passed by the learned Additional Principal Judge, Family Court, Faridabad, whereby monthly maintenance of Rs.5,000/- (Rs.3,000/- per month for wife-respondent No.1 and Rs.2,000/- per month for minor child-respondent No.2) has been awarded.

Facts, in brief, leading to the filing of the present petition are that respondent No.1 approached the Family Court through a petition dated 10.07.2017, Annexure P-1, under Section 125 of the Code seeking maintenance allowance of Rs.30,000/- per month on her and her son's

behalf. She has averred that she was married to the petitioner on 28.06.2010 at Faridabad and even though sufficient dowry was given at the time of marriage including a motor cycle, gold and silver ornaments, yet the petitioner and his family members were not satisfied. They demanded more dowry items and cash of Rs.1 Lakh besides a car, which could not be fulfilled and they started torturing her. She was turned out of the matrimonial home when she was pregnant. Her delivery took place at her paternal home and after reconciliation, she joined the conjugal company of the petitioner. Despite assurance, there was no change in the attitude of the in-laws and in January, 2011, she was again turned out from the matrimonial home and all her ornaments and personal items were retained by them. Earlier, she had filed a petition under Section 125 of the Code, which was withdrawn due to some technical reason. She has claimed that she is not in a position to maintain herself, whereas, the petitioner is an agriculturalist and is earning Rs.70,000/- per month. Upon being served, petitioner filed a reply dated 10.11.2017, Annexure P-2, opposing the petition and has made a reference to order dated 03.12.2012, Annexure P-6, passed in the application seeking interim maintenance. He has alleged that the respondent No.1 became pregnant through his brother, Bhagat Singh, who is the biological father of the child, and has denied the paternity of the child. It has also been submitted that the petition under Section 9 of the Hindu Marriage Act, 1955 was filed by the petitioner, wherein respondent No.1 stated that she is not prepared to stay with him and had alleged that he is impotent. A potency test was conducted at the Government Hospital and it was found that the petitioner is not impotent. He has also claimed that whereas

respondent No.1 has been living in adultery, criminal proceedings initiated at her instance have resulted in the acquittal of the petitioner and his family members. He has denied that he is an agriculturalist or that he has any income. After examining the evidence produced by the parties, learned Family Court vide order dated 11.02.2021, which has been impugned herein, awarded maintenance to the respondents as has been noticed above and ordered that maintenance granted in other litigation between the parties shall be set off against the awarded amount.

By referring to order dated 03.12.2012, Annexure P-6, counsel for the petitioner has urged that respondent No.1 has refused to reside with the petitioner. Counsel argues that there is no material on the record to come to the conclusion that the petitioner is earning and is in a position to take care of himself and the respondents.

I have heard counsel for the petitioner and examined the documents placed on the record with his able assistance.

There is no dispute about the marital ties between the parties. The petitioner has admitted that he was married to respondent No.1. Though, he had disputed the paternity of the child-respondent No.2, yet during the course of his cross-examination, he has stated that respondent No.2 is his son. Therefore, there remains no doubt about the paternity of the child and both the respondents are held to be his immediate family members. It is his moral duty and obligation to maintain them. The statement of respondent No.1 is being read out of context by the petitioner. The first petition filed by respondent No.1 under Section 125 of the Code was withdrawn by her vide order dated 27.04.2013, Annexure P-7. Respondent No.1 had averred that she was

being harassed and maltreated by the petitioner and his family members and was turned out of the matrimonial home. She lodged FIR No.89 dated 18.03.2012 under Section 498-A, 406, 506, IPC at Police Station Hodal, District Palwal against the petitioner and his family members, who were acquitted vide judgment dated 29.02.2016. Criminal Appeal preferred by respondent No.1 was dismissed by the learned Additional Sessions Judge, Palwal, vide judgment dated 08.09.2017, Annexure P-8, wherein the Court found that there is a dispute between respondent No.1 and the accused, though it is not a dispute of dowry, but has something to do with the personal relationship between them. It is, therefore, stands established that there was a sufficient reason for respondent No.1 to stay separately from her husband-petitioner.

In ***Sunita Kachwaha and others Versus Anil Kachwaha 2014 (4) RCR Criminal 831***, Hon'ble Supreme Court has held that proceedings under Section 125 of the Code are summary in nature. It is not necessary for the Court to ascertain as to who is in the wrong and the minute details of the matrimonial dispute between husband and wife need not be gone into. It has been further held that inability to maintain herself is the pre-condition for grant of maintenance to the wife and she must positively aver and prove that she is unable to maintain herself, in addition to the fact that the husband has sufficient means to maintain her and has neglected to do so.

In so far as the present case is concerned, respondent No.1 has averred as well as established that she is totally dependent upon her parents for her daily expenses. Even respondent No.1 has not been able to show that she is an earning hand or is in a position to earn. In so far as

petitioner is concerned, he has admitted that he is a owner of two acre of arable land and has mentioned his annual income to be a paltry amount of Rs.20,000/-. It has come on the record that the land is situated in the town of Hodel, which is a part of National Capital Region and is capable of generating a handsome return. Moreover, the petitioner is an able bodied person and it cannot be said that he is not in a position to earn for himself and his family.

Keeping in view the intent and objective behind the incorporation of Section 125 in the Code, this Court is of the view that the maintenance awarded by the Family Court to the respondents cannot be said to be excessive or unjustified.

There is no illegality or perversity in the impugned order and the same does not call for any interference in the limited revisional jurisdiction of this Court.

Finding no merit, petition is hereby dismissed.

30.05.2022
Kamal

(SUVIR SEHGAL)
JUDGE

Whether speaking/ reasoned	Yes/ No
Whether Reportable	Yes/ No