

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-34650 of 2022 (O&M)
Date of decision:24.08.2022

Manu Kaushik

... Petitioner

Vs.

Smt. Nidhi Sharma and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Kshitij Sharma, Advocate
for the petitioner.

SUVIR SEHGAL J.

CRM No.30479 of 2022

For the reasons given in the application, it is allowed.

Petitioner is permitted to place on record the interim orders passed by the Family Court, Gurugram as well as the calculation sheet of arrears of maintenance and bank statement as Annexures P-9 to P-10/A, respectively.

CRM-M-34650 of 2022

Instant petition has been filed under Section 482 Cr.P.C, of the Code of Criminal Procedure, 1973 (for short “the Code”) seeking setting aside of order dated 24.05.2022 (Annexure P-1) passed by the Court of Additional Principal Judge, Family Court, Gurugram, whereby, an application filed by the husband-petitioner to cross-examine wife-respondent No.1, has been dismissed.

Counsel for the petitioner has submitted that vide order dated 14.08.2017, Annexure P-3, Family Court, Gurugram accepted the petition filed by the respondents, who are wife and both minor children of the petitioner and granted monthly maintenance of Rs.25,000/- to them (Rs.10,000/- per month for wife-respondent No.1 and Rs.7,500/- per month for each child). He submits that petitioner has been regularly making payment of maintenance and by an application filed on 28.05.2018, Annexure P-4, the respondents have sought enhancement of maintenance under Section 127 of the Code. Counsel submits that reply dated 05.12.2018 (Annexure P-5) has been filed by the petitioner contesting the application. An affidavit dated 26.02.2021 (Annexure P-5/A) has been filed by respondent No.1 in support of her claim, but the petitioner did not get proper opportunity to cross-examine her and the evidence of the claimants was closed by order dated 05.10.2021. Counsel submits that immediately thereafter, the petitioner filed an application dated 01.12.2021 (Annexure P-6) for cross-examination of respondent No.1, which was opposed by the respondents by filing reply (Annexure P-7) and the same has been dismissed by the Trial Court, vide order impugned herein. Counsel urges that the primary reason for declining the application is because the petitioner had given a cheque of Rs.2.85 lacs as arrears of maintenance, which has been dis-honoured. By referring to the bank statement, Annexure P-10/A, counsel submits that the said amount has been eletronicallly transferred to the bank account of respondent No.1 on 03.06.2022. Still further, he submits that the petitioner is not in arrears of maintenance. It is his argument that cross-

examination is an indefeasible right and in the absence of opportunity to cross-examine, petitioner would not be able to establish that there has been no change in his economic status as is his stand, which is apparent from affidavit, Annexure P-8, filed by him before the Trial Court. Counsel has submitted that the petitioner deserves to be given a single opportunity to cross-examine the witness subject to payment of cost as this Court deems it appropriate.

I have heard counsel for the petitioner.

Considering the prayer made and the order proposed to be passed, this Court does not deem it necessary to call upon respondents.

From the bank statement and the submissions made by counsel for the petitioners, it appears that he is no longer in arrears of maintenance. Even though the evidence of the respondents has been closed, yet the petitioner cannot be denied an opportunity to cross-examine respondent No.1, despite the fact that the petitioner has been remiss in availing the opportunity granted to him.

Keeping in view the facts and circumstances of the case, this Court is of the view that interest of justice would be served in case an opportunity is granted to the petitioner to cross-examine respondent No.1, who can be adequately compensated by way of costs.

In view of the above, impugned order dated 24.05.2022 (Annexure P-1) is set aside. Trial Court is directed to grant the petitioner an effective opportunity to cross-examine respondent No.1 on a date to be fixed by the Family Court. This will be subject to payment of cost of

Rs.25,000/- to respondent No.1 as well as payment of up-to-date arrears of maintenance, if due.

It is made clear that in case the petitioner fails to deposit the cost or pay the entire arrears, this petition will be treated to have been dismissed.

(SUVIR SEHGAL)
JUDGE

August 24, 2022
savita

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes