

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(110)

CRR(F)-832-2022

Date of Decision: 14.09.2022

Dharmender @ Sonu

--Petitioner

Versus

Smt. Nandini @ Vinita & another

--Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Deepkaran Dalal, Advocate for the petitioner.

RAJESH BHARDWAJ.J (Oral)

The petitioner has approached this court by way of filing the present revision petition impugning the order dated 4.8.2022 passed by the learned Family Court, Palwal, whereby a total maintenance @ Rs.3500/- per month (Rs.2,000/- to respondent no.1 and Rs.15,00/- to respondent no.2) has been awarded.

Learned counsel for the petitioner contends that the marriage of the petitioner took place with respondent no.1 on 24.2.2012. Two children were born out of the wedlock. Thereafter, matrimonial discord took place between husband and wife and despite the best efforts of the petitioner the respondent no.1 wife deserted the matrimonial home without any rhyme and reason. Son namely Nonidh is in the custody of mother, whereas another son Shyam is with the father. He submits that after desertion the respondent wife filed a petition under Section 125 Cr.P.C praying for grant of maintenance. However, as the respondent wife did not appear on 14.10.2016 before the learned Family Court the petition was dismissed in default. After a period of about seven months from the dismissal of the earlier petition, the respondent wife filed a fresh petition on the same cause

of action before the learned Family Court praying for maintenance for herself and her son. Counsel submits that learned Family Court has ignored the conduct of the respondent wife of filing various petitions seeking the same relief. It is submitted that after restoration of the petition both the parties led their respective evidence. Counsel submits that petitioner husband is ready to live with the respondent wife but she has refused for the same. He submits that as per evidence lead by the petitioner, his income was shown to be Rs.15,000/- per month from his grocery shop, however, learned Family Court has failed to appreciate the same and thus drawn a wrong conclusion. He submits that the petition under Section 125 Cr.P.C was not maintainable as the respondent left the matrimonial home with her own will and there was no justification for the same. It is submitted that the respondent wife has concealed the material facts about her income as she is earning well. Counsel submits that petitioner lives in a joint family and he is running a grocery shop which is in 12 sq. yards. The income of the entire family is about Rs.15,000/- per month out of which the substantial part is spent on the family including the medical expenses of his parents. However, learned Family Court has wrongly assessed the income of the petitioner to be Rs.60,000/- per month and thus the view taken by the learned Family Court in granting a total maintenance of Rs.3500/- per month to the respondent wife and the minor son is totally unsustainable in the eyes of law and the same deserves to be set aside.

I have heard learned counsel for the petitioner at length and have gone through the record carefully.

It is apparent from the record that the relationship between the petitioner and respondents is not in dispute. Due to some matrimonial discord the respondent wife left the matrimonial home along with the minor son. She filed a petition under section 125 Cr.P.C claiming maintenance for herself and her minor son. Though at some stages the petition was dismissed for non-prosecution, however, the same was restored subsequently. Both the parties have duly filed their respective affidavits before the learned Family Court to show their respective income. The argument raised by counsel for the petitioner that the learned Family Court should not have restored the petition filed for non-prosecution, is without any merits. The provisions of section 125 Cr.P.C are for the survival of the estranged wife. The proceedings are summary in nature. The court could not have gone in the technicalities of the law in debarring the aggrieved wife and the minor from claiming the maintenance and thus restoration of the petition was totally justified and in the interest of justice.

In plethora of judgements, it has been held by the Hon'ble Supreme Court that the husband is not only legally but morally also bound to discharge his responsibility for providing maintenance to his wife. The Hon'ble Supreme Court in ***Rajnesh V. Neha, (2021) 2 SCC 324*** has already settled the law. The petitioner is an able bodied person and cannot escape the responsibility of providing maintenance to his estranged wife and minor son. There is nothing on record to show that the respondent wife has deserted the matrimonial home with her own will. Learned Family Court has awarded a total maintenance of Rs.3500/- per month to the respondent wife and the minor son keeping in view all the facts and circumstances as

also the evidence adduced on record.

This court finds no infirmity in the conclusion arrived at by the learned Family Court. The total maintenance of Rs.3500/- per month granted to the respondent wife and the minor son cannot be said to be on the higher side. The petition being devoid of any merit is accordingly dismissed.

(RAJESH BHARDWAJ)
JUDGE

14.09.2022
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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No