

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

(120)

CRR(F)-15-2022

DATE OF DECISION:- 29.04.2022

RAJIV KUMAR

...PETITIONER

VERSUS

MONIKA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Puneet Kakkar, Advocate for the petitioner.

SUVIR SEHGAL, J. (ORAL)

Instant revision petition has been filed under Section 401 of the Code of Criminal Procedure, 1973 (for short “the Code”) challenging order dated 09.09.2021, whereby Family Court, Rohtak has awarded a monthly maintenance of Rs.20,000/- to the respondent from the date of passing of the order. It has been further directed that the respondent would be entitled to recover the maintenance allowance either in the proceedings under the Protection of Women from Domestic Violence Act, 2005 (for short “DV Act”) or in the present proceedings and would also be entitled to recover interim maintenance awarded in the proceedings under Section 125 of the Code.

In brief, facts leading to the filing of the present petition are that the respondent approached the Family Court by invoking Section 125 of the Code averring that she was married to the petitioner on 21.02.2015 and her parents spent Rs.25 lacs on marriage, which was much more than their financial capacity. When she reached her

matrimonial home, her mother-in-law kept all her ornaments on the pretext of safe keeping. The petitioner and his family members were not happy with the dowry and they demanded a car. It has been stated that her husband had unnatural sex with her on the first night and her father-in-law and brother-in-law had an evil eye on her. When she refused to meet the demand of the car, she was mercilessly beaten on 17.06.2015. Her father subsequently arranged and paid Rs.7 to them, installments over a period of one year. Harassment at their hands continued even during her pregnancy and she was turned out of her matrimonial home on 18.08.2016. She took shelter in a temple, reported the matter to the police and with their intervention, the petitioner and his family members, after giving an assurance that they will not ill-treat her, took her back to the matrimonial home on 10.12.2016. She gave a birth to a female child on 03.03.2017 and due to continuing harassment, she suffered a paralytic attack and was admitted in Shri Ganga Ram Hospital, Delhi from where she was discharged on 25.03.2017. All the expenses of her medical treatment were borne by her father. Attempt was made by her father-in-law and brother-in-law to outrage her modesty, however, she got saved in the nick of time. On 02.04.2017, her mother took her to her paternal home and all her dowry and Istridhan articles are still with the petitioner and his family members. FIR No.239 dated 25.07.2017 has been registered at Police Station Old Sabzi Mandi, Rohtak under Section 498-A, 406 and 34 of the Indian Penal Code, 1860 and despite efforts by her family members, the dispute could not be settled. She has pleaded that she has neither any source of income nor property, whereas the petitioner is working in Dell Company at Noida and is drawing a monthly

salary of more than Rs.1 lac, besides owning numerous properties. A claim of Rs.50,000/- as monthly maintenance, besides litigation expenses has been made. Petition has been contested by the respondent by filing a reply, wherein it has been submitted that the wife-respondent has been taking different stands before different Courts and she has a handsome salary, whereas he has suffered a huge financial loss. The stand taken by him is that the respondent is pretending to be suffering from paralysis and her entire motive is to extract money from the petitioner. It has been submitted that she has filed a false affidavit regarding physiotherapy treatment and expenses incurred thereon.

Counsel for the petitioner has assailed the order primarily by relying on the acknowledgment slip, Annexure P-3, of Income Tax Return submitted by the petitioner for the financial year 2018-19 to submit that income of the petitioner has fallen. He submits that the respondent is physically fit, is not suffering from any disability and is in a position to earn for herself. It is his argument that the maintenance awarded by the Court below is excessive and not warranted in the facts of the present case.

I have heard counsel for the petitioner and examined the impugned order as well as the documents appended with the paper book, with his able assistance.

There is no dispute about the marital ties between the parties and the birth of a female child, who is in the custody of the petitioner.

It has come on the record that the respondent was employed, but was terminated vide letter dated 24.01.2018, Annexure P-4, w.e.f. 23.03.2018 and thereafter she is unemployed. The reference made by

counsel for the petitioner on the e-mail, Annexure P-9, rather substantiates the stand of the respondent that she is without any job and has been sending her resume to different organizations and is exploring employment avenues. Even otherwise, merely because the respondent is educated and capable of earning, is not ground to decline her claim for maintenance as has been held by the Supreme Court in **Manish Jain Versus Akanksha Jain 2017 (2) RCR (Civil) 682.**

The admitted position is that the husband has filed an Income Tax Return of Rs.9,91,816/- for the financial year 2017-18 relevant to assessment year 2018-19, which shows that his monthly income is more than Rs.82,000/-. For the financial year 2018-19 relevant to assessment year 2019-20, the petitioner has placed reliance on the acknowledgment slip of his ITR return, Annexure P-3, to contend that his annual salary stood reduce to Rs.7,32,186/-. The reduction in one particular year, even if accepted, would not help the petitioner as he has not placed on record the Income Tax Returns for the subsequent years. Moreover, from the Provisional Certificate, Annexure P-10, issued by GIC Housing Finance Limited, it is apparent that the petitioner has taken a housing loan of Rs.27 lacs for the purpose of purchasing a new property from a builder and is paying Rs.32,593/- as monthly installment. It cannot be believed that a person with a monthly salary of about Rs.60,000/- can be extended such a huge housing loan and that he is paying more than half of his salary towards its repayment. It also deserves to be mentioned here that the petitioner has placed reliance upon the wedding card and photographs (Mark R-4 to R-6) taken at the time of marriage of his brother to submit that the respondent is not suffering from

paralysis and can be seen dancing at the marriage functions. However, the same would be of no avail to the petitioner as the respondent has not been awarded maintenance on account of her medical condition, rather the award has been passed as she is entitled to the same standard of living and status as she was enjoying at her marital home.

In *Smt. Jasbir Kaur Sehgal Versus The District Judge, Dehradun and others 1997 (7) SCC 484*, Supreme Court has held that no set formula can be laid for fixing the amount of maintenance and it would depend upon the factual position in each case. Amount of maintenance has to be fixed so that the wife can live in a reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. Supreme Court in *Chaturbhuj Versus Sita Bai 2008 (2) SCC 316* has held that the test is whether the wife is in a position to maintain herself in the way she used to in her husband's place. Supreme Court in *Kalyan Dey Chowdhury Versus Rita Dey Chowdhury Nee Nandy (2017) 14 SCC 200* has held that there is no hard and fast rule for determining the quantum of maintenance to be awarded to the wife, but as a thumb rule 25% of the husband's net salary would be just and proper to be awarded as maintenance to her.

Keeping in view the intent behind the provision and the judgments of the Supreme Court, this Court is of the opinion that there is no illegality or perversity in the finding recorded by the Family Court necessitating intervention in the revisional jurisdiction of this Court. The maintenance awarded cannot be said to be excessive.

Noticing the fact that the petitioner has not paid the maintenance awarded by the Family Court and is in arrears of Rs.5.81 lacs and a Conditional Warrant of his arrest, Annexure P-2, has been issued, this Court vide order dated 20.04.2022 granted an opportunity to the counsel for the petitioner to enable him to get instructions to clear the entire arrears. However, the counsel has not been given any instructions by the petitioner regarding the payment of the arrears.

In the above circumstances, no interference is called for with the impugned order.

Revision petition is dismissed.

(SUVIR SEHGAL)
JUDGE

29.04.2022
Kamal

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