

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

122

CRM-M-5196-2022

Date of decision :-14.07.2022

Rajinder Kumar

...Petitioner

Versus

Kamlesh Devi and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. R.K. Kachura, Advocate for
Mr. Gulam Nabi Malik, Advocate for the petitioner.

SUVIR SEHGAL, J.

Instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short “the Code”) seeking quashing of impugned judgments dated 17.01.2018 and 23.12.2021, Annexures P-1 and P-4, respectively, passed by the Court of learned JMIC, Dasuya and Additional Sessions Judge, Hoshiarpur.

Facts, in brief, leading to the filing of the petition are that marriage of the petitioner was solemnized with respondent No.1 on 13.10.1995 and a son-respondent No.2 was born on 20.12.1997. Respondent No.1 was harassed and maltreated by the petitioner on the pretext of bringing insufficient dowry. An FIR has been registered by her against the petitioner, who deserted her and is not making any payment towards

maintenance. With these facts, the respondents approached the learned Magistrate under Section 125 Cr.P.C. of the Code seeking a monthly maintenance. After contest by the petitioner, the claim was partly accepted by the learned Magistrate vide order, Annexure P-1, and respondent No.1 was granted monthly maintenance of Rs.5000/- from the date of the order, besides, litigation expenses of Rs.2000/-. This order has been upheld in appeal by the learned Appellate Court vide judgment, Annexure P-4. Both the orders are under challenge before this Court.

Counsel for the petitioner has argued that respondent No.1 is employed and is earning Rs.8000/- to Rs.9000/- per month and is in a position to meet her expenses. Reference has been made by him to order, Annexure P-3, passed by a Division Bench of this Court to submit that in a matrimonial appeal, a Division Bench of this Court has awarded a monthly *pendent lite* allowance of Rs.3000/- to respondent No.1 and award by the Courts vide orders, Annexures P-1 and P-4 is not warranted.

Heard counsel for the petitioner.

Although it has been urged by the counsel that respondent No.1 is working under a NREGA Scheme and has sufficient monthly income but he has not been able to substantiate the argument despite the fact that NREGA is a government run scheme and production of record to show that respondent No.1 is employed there, is not difficult. No doubt that there is a matrimonial litigation between the estranged couple, but that neither disentitles respondent No.1 nor is she barred from claiming maintenance under Section 125 of the Code even though she has been awarded maintenance under Section 24 of the Hindu Marriage Act, 1955. It has come on the record that the petitioner has retired from the Indian Army and is

drawing a monthly pension. He has also has share in ancestral land of about 10 acres from where he is earning from agricultural activity. Petitioner is, therefore, in a financial position to take care of his wife, who is separate in residence and is not shown to have any means to sustain herself. It deserves to be noticed, that the claim of respondent No.2 has been declined by the learned Magistrate as he has been found to have attained the age of majority and is employed.

Keeping in view the above backdrop, this Court is of the view that award of a monthly maintenance of Rs.5000/- to respondent No.1 can neither be said to be excessive nor unreasonable.

Petition lacks merit and is hereby dismissed.

14.07.2022
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No