

In the High Court of Punjab and Haryana at Chandigarh

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Date of Decision: 23.1.2023

CRR(F)-207 of 2022

Balbir Singh

---Petitioner

versus

Kiran Bala and another

---Respondents

CRR(F)-675 of 2022

Kiran Bala

---Petitioner

versus

Balbir Singh

---Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Ashok Sharma Nabhewala, Advocate
for the petitioner in CRR(F)-207 of 2022
for respondent in CRR(F) 675 of 2022

Mr. Amit Kumar Saini, Advocate
for the petitioner in CRR(F)-675 of 2022
for respondents in CRR(F)207 of 2022

JAGMOHAN BANSAL, J. (ORAL)

1. By this common order, above-mentioned petitions are
being disposed of as these have arisen out of order dated
13.10.2021. For the sake of convenience, facts are taken from CRR(F)-

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207 of 2022.

2. The petitioner, through the instant petition, is seeking setting aside/modification of order dated 13.10.2021 whereby Principal Judge Family Court, Ludhiana has allowed application under Section 127 Cr.P.C. of the respondent-wife and enhanced amount of maintenance from Rs. 1000/- to Rs. 10,000/- from the date of application i.e. 24.2.2014.

3. The petitioner solemnized marriage with respondent on 20.5.1997 and out of this wedlock one son namely Simranjit Singh was born on 21.7.1998. The petitioner on 25.1.2000 preferred a petition under Section 9 of the Hindu Marriage Act which was withdrawn on 27.7.2000. The respondent preferred petition under Section 125 Cr.P.C. on 17.1.2001 and respondent was awarded maintenance of Rs. 1000/- per month vide order dated 5.9.2007. A petition under Section 13-B of Hindu Marriage Act seeking divorce by mutual consent came to be filed, however, it could not fructify because respondent did not come forward to make her statement. Additional Sessions Judge, Ludhiana, vide judgment and decree dated 15.1.2006 dissolved marriage between the parties and appeal bearing No. FAO-M-39 of 2008 is still pending before this court.

4. The respondent preferred application under Section 127 Cr.P.C. seeking enhancement of maintenance. The application was filed on 24.2.2014. The Family Court vide impugned order dated 13.10.2021 has allowed application under Section 127 Cr.P.C. of the respondent and enhanced amount of maintenance from Rs. 1000/- to Rs. 10,000/-. The amount of maintenance has been enhanced from the

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date of application i.e. 24.2.2014.

5. Learned counsel for the petitioner submits that marriage between the parties stands dissolved and appeal seeking setting aside of decree of divorce is pending before this Court. The marriage was solemnized in 1997 and order of maintenance of Rs. 10,000/- at this belated stage is excessive and disproportionate to income of the petitioner. Learned counsel further submits that amount of maintenance could not be enhanced with effect from the date of application whereas it should be from the date of order.

6. Learned counsel for the respondent submits that appeal of the respondent is still pending before this Court and she during this entire period had looked after her son who is suffering from chronic disease. The respondent has incurred a huge amount on the treatment of her son. A sum of more than Rs. 9 lacs is pending as arrears against the petitioner, however, he is neither making payment towards maintenance nor coming forward for settlement one or another way.

7. I have heard arguments of both sides and perused the records.

8. The relevant extracts of order dated 13.10.2021 read as:-

“Now the question arises as to what amount of the maintenance allowance from Rs.1,000/- per month to applicant no.1 already granted vide order dated 05.09.2007, is to be enhanced at this stage because the applicants have filed this application for altering the maintenance from Rs.1,000/- per month to Rs.10,000/- per month for the applicant

no.1 and from Rs.700/- per month to Rs.15,000/- per month for the applicant no.2 under section 127 of Cr.P.C referred here-in-above on account of arising of prices of every good after passing the said order dated 05.09.2007 to live in the hard time of now-a-days. The contention of learned counsel for the respondent raised to the effect that the quantum of the maintenance already granted to the applicant no.1 vide said order dated 05.09.2007 cannot be altered for enhancement of the same in favour of the applicant no.1, is not found to be sustainable from any angle as per rival stands of the parties and also of rising prices of every commodity from day to day needs of every one after passing the order dated 05.09.2007 in favour of the applicants and never reversing the same against the applicants even as per views taken in Nitaben DineshKumar Oza Vs.. Dibesh Kumar Ishwarlal Oza and another 2016(2) CrI.CC 785(Gujrat), Joy Varghese Vs. Leelamma 2007(4) CrI.CC081 (Kerala)(DB) and Shiva Kumar Pradhan Vs. Meera Rawat and another 2016(4) CrI.CC437(Sikkim) referred by learned counsel for the respondent. The respondent being government employee admittedly in Irrigation Department of Punjab has been drawing his salary more than

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Rs.60,000/- to 70,000/- per month but has concealed the same deliberately on record otherwise must have brought his salary record on the record for showing his bona-fide and resulting of which, it concluded from the rival circumstances of the parties that the applicant no.1 is entitled to enhanced amount of maintenance more than of Rs.10,000/- per month but has claimed enhanced amount of maintenance of Rs.10,000/- per month only from the date of filing this application filed on 24.02.2014 till entitlement of the same by the applicants from the respondent as per view taken in Girdhar Lal Vs. Shashi Kumari, 2017(2) CCC-745(HP), Rajnesh Vs. Neha and anr 2021-SCC-324, Seema and another Vs.Gourav Juneja with Gourav Juneja Vs. Seema and another 2019(2)RCR(Crl)219,Madhu and another Vs. Rajesh Gupta 2019(4) RCR(Crl.)737, Smt. Chitrawati and others Vs. Azad Singh 2003 (2) SimLJ 1719 and Reema Salkan Vs. Sumer Singh Salkan 2018(4) RCR (Crl.)395, referred by learned counsel for the applicants for altering the maintenance toward higher side in favour of the applicant no.1 and resulting of which, the said issues are decided partly to the said effect in favour of the applicant no.1 and resultantly

against the respondent.

Relief

The application bearing CNR No. PBLDF40006592019, Filing No.156 dated 27.04.2015 and Regd. No.CRM/49 of 2019 of the applicants as per brief discussion about the aforesaid issues, succeeds and is allowed but the application bearing CNR No. PBLDF40006492019, Filing No.151 dated 10.08.2016 and Regd.No.CRM/44 of 2019 under section 127 of Cr.P.C of the respondent fails and is dismissed, with the directions to the respondent to pay the maintenance allowance @ Rs.10,000/- per month to the applicant no.1 from the date of this application filed on 24.02.2014 till entitlement of the same by the applicant no.1 from the respondent, in the interest of justice to said effect to keep balance between the parties. The copy of this order be also placed on record of the application under section 127 of Cr.P.C clubbed with the present application. The file of the present application with the record of clubbed application be consigned to Record room, Samrala.”

9. It is undisputed fact that till date decree of divorce has not attained finality. It is further undisputed fact that a sum of Rs. 1000/- vide order dated 5.9.2007 was awarded as maintenance to respondent-wife which in the present scenario cannot be sufficient,

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thus, the court below has rightly enhanced maintenance amount from Rs. 1,000/- to Rs. 10,000/-. The petitioner being husband is morally, socially, ethically and statutorily liable to maintain his wife as well children. The petitioner is attempting to deflect from his responsibility which can neither be appreciated nor approved by this Court.

10. The argument of the petitioner that amount of maintenance in terms of Section 127 Cr.P.C. can be enhanced only from the date of passing of order is misplaced because it is settled proposition of law that nobody can be put to a disadvantage position on account of lapse on the part of court or fault of another person. The respondent indubitably preferred application seeking enhancement in 2014 which remained pending till 2021 and for this long delay of non-adjudication, the respondent cannot be deprived of her substantial right of maintenance. It is most relevant and inevitable to keep in mind that earlier maintenance awarded was minuscule i.e. Rs. 1000/- per month which in any way cannot be considered as just, reasonable and fair.

11. Learned counsel could not advance any plausible reason to further enhance the amount of maintenance awarded to the respondent(wife), thus, her petition deserves to be dismissed.

12. Both petitions stand dismissed.

(JAGMOHAN BANSAL)
JUDGE

23.1.2023

paramjit

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No