

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR-4222-2014 (O&M)

Date of order: 07.08.2023

Yashpal @ Yashpal Goyal

.....Petitioner(s)

Vs.

Sarika & Another

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vipul Aggarwal, Advocate
for the petitioner.

Mr. Parminder Singh, Advocate
for respondent No.1.

Nidhi Gupta, J.

Vide order dated 08.11.2011 (Annexure P-4), learned JMIC, Karnal had dismissed petition filed by the wife of the petitioner i.e. respondent No.1 herein under Section 125 Cr.P.C. Vide the impugned order dated 15.09.2014 passed by learned Additional Sessions Judge, Karnal, the above said order dated 08.11.2011, has been set aside. Hence, present revision petition.

2. Learned counsel for the petitioner-husband submits that the petitioner was married to respondent No.1 on 09.10.2002 and they have been living separately since 22.03.2003 i.e after five months of marriage. It is submitted that one child was born out of their wedlock on 12.10.2003 who died on 13.10.2003. It is submitted that respondent No.1 left the matrimonial home of her own accord, and though it has been pleaded by respondent No.1 that she was thrown out of the matrimonial home on 22.03.2003, the said Averment is utterly false and she is not able

to produce evidence in support of her allegation. It is further submitted that vide the impugned order dated 15.09.2014, the petitioner has been directed to pay maintenance allowance to respondent No.1 @ Rs.6,000/- per month from the date of order passed by learned trial Court i.e. 08.11.2011.

3. Learned counsel submits that the petitioner was a Central Government employee and was formerly employed in the Audit Department at Chandigarh. However, respondent No.1 had filed an FIR under Sections 406 and 498-A IPC against the petitioner and his family in which the petitioner was convicted for one year, while his family was acquitted. It is submitted that due to his conviction, the petitioner was suspended from his job vide order dated 16.06.2014, and suspension was further extended vide order dated 12.09.2014 (Annexure P9 and P10 respectively), as a result of which the petitioner was only getting subsistence allowance. It is submitted that accordingly, the petitioner cannot afford to make the payment as per impugned direction.

4. It is also submitted that the learned trial Court vide its order dated 08.11.2011 (Annexure P4) was correct in dismissing the petition under Section 125 Cr.P.C. filed by respondent No.1 on the ground that there is no evidence on record which shows that respondent No.1 was compelled to leave the company of the petitioner. It is submitted that in fact, respondent No.1 had left the matrimonial home on her own will in March, 2003 without any reasonable cause.

5. Learned counsel further submits that it has been alleged against the petitioner that the petitioner beat the respondent-wife during her pregnancy because of which she had to get herself admitted to Neera Nursing Home at Karnal. It is submitted that there is no medical evidence on record to corroborate the fact that respondent No.1 was ever admitted in Karnal at Neera Nursing Home. On the contrary, PW2-Sanjiv Kumar, brother of respondent No.1 has admitted in his cross-examination that he had brought respondent No.1 on 22.03.2003 from Jaipur Gardem Hospital where she was admitted by the petitioner. Learned counsel further submits that as per cross-examination of PW2-Sanjiv Kumar, brother of respondent No.1, respondent No.1 had left her matrimonial home on 05.08.2004, which means that allegations levelled by respondent No.1 with regard to her ill-treatment during pregnancy are ill-founded.
6. It is further submitted that the learned trial Court has correctly observed that PW2 Sanjiv Kumar, had admitted in his cross-examination that he is running a coaching centre where mathematics and commerce are being taught and respondent No.1 is having a professional degree of B.Ed. B.Com. and thus, it is highly improbable that respondent No.1 would not be helping her brother in that coaching centre.
7. Learned counsel for the petitioner also submits that the petitioner is suffering from nervous disorder and depression due to atrocities committed upon him by respondent No.1. It is submitted that the petitioner is undergoing treatment from PGI, Chandigarh for the same, as evident from medical record (Annexure P1).

8. Per contra, learned counsel for respondent No.1 submits that as per findings recorded in the impugned order passed by lower Appellate Court, in the year 2009 the petitioner was getting gross salary of Rs.23,278/- of which Rs.5,000/- was being deducted towards GPF. Whereafter net salary of the petitioner was Rs.19,813/-. Learned counsel submits that in these circumstances, there is no error in the impugned order and the same deserves to be upheld.

9. I have heard learned counsel for the parties.

10. Perusal of record of the case reveals that the first allegation made by the respondent No.1 against the petitioner is that she was ill treated during her pregnancy by the petitioner. Due to her ill-treatment, the respondent No.1 had also filed an FIR under Sections 406 and 498-A IPC against the petitioner and his family in which the petitioner was convicted for one year, while his family was acquitted. It is an admitted fact that the petitioner lost his job due to his conviction. It has also come on record that the petitioner filed an appeal against his conviction bearing Criminal Appeal No.73 of 2014, which was allowed by the learned Additional Sessions Judge, Karnal vide order dated 10.12.2015; whereas the appeal bearing Criminal Appeal No.68 of 2014 of respondent No.1/wife filed against the acquittal of family of the petitioner was dismissed by learned Additional Sessions Judge, Karnal vide order dated 10.12.2015. Cruelty by the petitioner against the respondent No.1 is therefore, not made out.

11. Besides this, it was the story put forth by the respondent No.1 that due to the ill treatment inflicted upon her by the petitioner, she was brought back to her parental home at Karnal on 22.3.2003 by her brother, where she had undergone treatment at Neera Nursing Home at Karnal. However, respondent has not produced one whit of evidence in support of her said contention either before the learned Courts below, or before this Court. There are no details whatsoever available on record to show, as to which of her four brothers brought her back to Karnal, on what date was she admitted in the Nursing Home, or any other documentary evidence in form of medical record to show as to what treatment did she undergo. Accordingly, the story put forth by the respondent No.1 that she was compelled to leave the matrimonial home due to the atrocities of the petitioner, does not bear scrutiny.

12. On the contrary, perusal of the record of the case reveals that there are serious discrepancies and loopholes in the story put forth by the respondent No.1. It is the case of respondent No.1 that she was thrown out of the matrimonial home on 22.3.2003 due to ill treatment of the petitioner, whereafter, she was taken to Karnal by her brother where she underwent treatment at Neera nursing home. However, as per examination-in-chief of PW2-Sanjiv Kumar, brother of respondent No.1, the respondent No.1 was shunted out of her matrimonial home on 05.08.2004. If this version is to be believed, then the allegations of the respondent No.1 that she was beaten by the petitioner during her pregnancy due to which PW2 was called and thereafter the respondent was admitted at Neera Nursing Home, is not corroborated by the testimony of PW2. In further

contradiction of the above version, PW2-Sanjiv Kumar, brother of respondent No.1, has also admitted in his cross-examination that he had brought respondent No.1 on 22.03.2003 from Jaipur Gardem Hospital. It is therefore, clear that the respondent has tried to somehow set up a false case of cruelty against the petitioner. However, as already noted above, she was unable to prove the cruelty on part of the petitioner; and has brought forth no evidence to show that she did not voluntarily leave the matrimonial home.

13. It has also been alleged against the petitioner that he harassed the respondent No.1 for dowry, and in particular demanded a Maruti Zen Car. However, again no details are available as to when, how and where were these alleged demands made. Not a single date had been mentioned when the demand of Maruti Zen car was raised.

14. It is my considered opinion that in view of the above uncontroverted facts, the respondent has been unable to prove that she was compelled to leave the matrimonial home due to the atrocities of the petitioner. At this stage, it would be apposite to refer to Section 125 (4) CPC which is very clear and is reproduced hereinbelow:-

“No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refused to live with her husband, or if they are living separately by mutual consent.”

15. Perusal of the above provision leaves no manner of doubt that it has been clearly stipulated therein that if the wife leaves the matrimonial home/refuses to live with the husband without any sufficient

reason, then she will not be entitled to receive any maintenance. Accordingly, I find the impugned order unsustainable.

16. It is also relevant to note that it has been admitted by PW2, brother of respondent No.1, that respondent No.1 is living with her mother. It has also come on record that Vishal, another brother of respondent No.1 is an Accountant and is unmarried and does not live separately, and is living with respondent No.1 and her mother. It is further an admitted fact that the respondent No.1 is B.Ed. B.Com. and PW2 runs a coaching centre where maths and commerce is being taught. There is nothing to suggest as to why the respondent No.1 would not be working at the coaching centre of her brother PW2.

17. In the above factual matrix, reliance may be placed upon judgment of the Karnataka High Court rendered in “**Shilpashree J.M. Vs. Gurumanjunatha A.S.**” decided on June 19, 2023, where in it has been held that wife cannot sit idle and seek entire maintenance from estranged husband. This Court is compelled to observe that it is the equal duty of the wife to maintain herself, especially if she is well qualified, as in the present case. Relevant part of said judgment is reproduced hereinbelow:-

“...there is no explanation as to why she is incapable of working now. She is not supposed to sit idle and seek entire maintenance from her husband and she is also legally bound to make some efforts to meet her livelihood”

18. In view of the above discussion, the present petition is **allowed**, and the impugned order dated 15.09.2014 is set aside.

19. Pending application(s) if any also stand(s) disposed of.

07.08.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No