

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****223****CRR (F) No.110 of 2017  
Reserved on : 31.08.2023  
Date of Decision : 12.09.2023**

Surender

....Petitioner

VERSUS

Krishna and Another

....Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Gorav Kathuria, Advocate for the petitioner.

Mr. Vikas Chaudhary, Advocate for the respondents.

**ALKA SARIN, J.**

1. This is a revision petition challenging the order dated 02.01.2017 whereby the application filed by the respondents under Section 127 CrPC for enhancement of the maintenance to them was allowed.

2. The Family Court vide the impugned order dated 02.01.2017 allowed the application under Section 127 CrPC by enhancing the amount of maintenance and directing the petitioner herein to pay Rs.2,000/- pm to the respondent No.1-wife and Rs.1,000/- pm to respondent No.2-son from the date of the application. The petitioner was further directed to pay a lump sum amount of Rs.1,00,000/- to respondent No.1-wife on account of education of respondent No.2-son.

3. Learned counsel for the petitioner, at the outset, states that he does not wish to press the present petition *qua* respondent No.1-wife and that he has been paying the maintenance regularly to her. *Qua* respondent No.2-son, learned counsel for the petitioner has contended that the petitioner

himself is 80% disabled due to mental illness, which is also apparent from his disability certificate dated 24.06.1999 (Ex.R1). It is further the contention of learned counsel for the petitioner that respondent No.2-son was a student of B.Tech and that his course was from 2011 to 2015. In 2016 there was only a supplementary paper which was left and he was to re-appear for the said paper in 2016. It is submitted that the B.Tech course itself had finished and therefore the amount of Rs.1,00,000/- awarded on account of education of respondent No.2-son is not sustainable. It has also been contended that respondent No.2-son is 30 years of age. The learned counsel has also challenged the grant of maintenance to the son.

4. *Per contra* learned counsel for the respondents has contended that respondent No.2-son had been granted an amount of Rs.1,00,000/- on account of his education and that though he is 30 years of age he has still not got a job. Learned counsel for the respondents has further contended that the amount awarded is on account of education of respondent No.2-son starting from his schooling till B.Tech and not a penny has been paid by the petitioner towards his education. He, however, states that *qua* the monthly maintenance granted to the son he would not be opposing the challenge.

5. I have heard learned counsel for the parties.

6. In the present case the counsel for the petitioner at the outset states that he does not wish to press the present petition *qua* respondent No.1-wife and that he has been paying her maintenance regularly since the passing of the order. The only grouse of the petitioner is that he is himself 80% disabled due to mental illness, which is also apparent from his disability certificate dated 24.06.1999, and that he has been directed to pay

an amount of Rs 1,00,000/- as lump sum payment to the respondent No.2-son.

7. The application for enhancement was filed by the respondents on the ground that the petition under Section 125 CrPC was accepted by the Court on 20.04.2005 and thereafter the income of the petitioner had increased. In the application it has been mentioned that respondent No.2-son was a student of B.Tech and his admission and other charges were Rs.1,50,000/- per annum and, therefore, respondent No.2-son was entitled to an amount of Rs.1,50,000/- per annum towards his educational expenses and respondent No.1-wife was also entitled to an increase in the maintenance.

8. The Family Court has not relied upon the disability certificate produced by the petitioner as the doctor did not appear to prove the same. However, the respondents have nowhere denied the fact that petitioner has a mental disability. There is no evidence on the record regarding the income of the petitioner except an admission that he sells slippers. Though the respondents had contended that the petitioner is running two shops but no details have come in evidence qua the said shops. The son of the petitioner i.e. respondent No.2 was a B.Tech student and his course was from 2011 to 2015. In 2016, only a supplementary paper was left and he was to re-appear for the said paper in 2016. Respondent No.2-son is now stated to be 30 years of age.

9. The Family Court vide the impugned order dated 02.01.2017 has altered the allowance payable to the respondents. Initially there was no amount awarded to respondent No.2-son towards his education expenses. However, vide the impugned order a lump sum amount of Rs.1,00,000/- towards the educational expenses of respondent No.2-son has been awarded.

The respondent No.2-son did not step into the witness box though he was a major and an adult at the relevant time. There is no evidence available on the record regarding the fee payable for his supplementary examination. Without there being any evidence on record qua the income of the petitioner, who is mentally disabled and is stated to be selling slippers, and without there being any evidence available regarding the fee to be borne by respondent No.2-son on the supplementary examination, the Family Court was not justified in awarding an amount of Rs.1,00,000/- towards the education of respondent No.2-son especially when the course itself was over and only a supplementary exam was left.

10. The enhanced monthly maintenance granted to respondent-No.2-son is also not sustainable keeping in view the fact that he was admittedly a major. The counsel for the respondents has also fairly stated that he does not wish to contest the petition qua the enhanced monthly maintenance awarded to respondent.No.2-son.

11. In view of the above, the impugned order in as far as it awarded Rs.1,00,000/- as lumpsum payment towards the education of respondent No.2-son and the enhanced monthly maintenance awarded to him is wholly unsustainable in law and is accordingly set aside. The petition qua the increased monthly maintenance awarded to the respondent No.1-wife is dismissed as not pressed. The revision petition stands partly allowed and the impugned order stands modified accordingly. Pending applications, if any, also stand disposed off.

12.09.2023  
jk

( ALKA SARIN )  
JUDGE

NOTE: Whether speaking/non-speaking: Speaking  
Whether reportable: YES/NO