

**IN THE HIGH COURT OF PUNJAB & HARYANA,
CHANDIGARH**

235

1. CRR No.3776 of 2018
Date of Decision: 31.05.2023

Tabassum Khan

..... Petitioner

v.

Mohd. Aarif Khan

..... Respondent

2. CRR No.3544 of 2018

Mohd. Aarif Khan

..... Petitioner

v.

Tabassum Khan

..... Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Sunil Panwar, Advocate for the petitioner/wife

Mr. Gautam Dutt, Advocate for the respondent/husband

Tribhuvan Dahiya, J (Oral)

This order shall decide two aforementioned petitions which have been filed against a common judgment passed by the Sessions Court, Gurugram, dated 9.8.2018, granting interim maintenance of Rs.40,000/- per month to the petitioner/wife and her two children. This judgment has decided an appeal against the order passed by the Magistrate allowing her application for interim maintenance under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act of 2005') in a complaint under Section 12 read with Sections 17, 18, 19, 20, 21, 22 and 23 of the Act.

2. The facts in brief are, marriage between the parties was

solemnized on 19.07.2008 and two daughters were born out of the wedlock. The elder daughter was born on 20.07.2009, and is stated to be suffering from blood cancer; the younger one was born on 21.02.2014. Both are studying in a school at Gurugram, and are in the petitioner/wife's custody. Her application for grant of interim maintenance under Section 23 of the Act of 2005 was decided vide order dated 17.3.2018, directing the respondent/husband to pay Rs. 15,000/- per month as interim maintenance for food, clothing and day to day expenses to the petitioner/wife, and Rs.5,000/- to each of the two daughters. In all, the respondent was directed to pay an amount of Rs.25,000/- per month. The order also records that he agreed to take care of the educational and medical expenses of his daughters and was accordingly directed to do so.

3. The respondent/husband did not challenge the order dated 17.3.2018 passed by the Magistrate. The petitioner/wife went in appeal before the Sessions Court, leading to passing of the impugned order dated 9.8.2018. The order records that in the year 2017-18, the respondent's gross salary was Rs. 17,35,000/- out of which, he had paid income-tax of Rs. 2,00,000/-. Considering the income, it was opined that he could easily pay maintenance of Rs. 40,000/- per month to his wife and two daughters. Since the Magistrate had not quantified the educational and medical expenses payable by the respondent/husband, the Sessions Court thought it appropriate to quantify the amount to set the controversy at rest, and, accordingly, directed the respondent/husband to pay an amount of Rs. 15,000/- for medical and education expenses to both the daughters, in addition to the amount already granted as regular maintenance. It was also held that contention of learned counsel for the respondent/husband that

there was no requirement of further increase in maintenance on account of other liabilities and salary, was without any basis. Accordingly, the respondent/husband was directed to pay Rs.25,000/- per month as ordered by the Magistrate, alongwith the quantified amount of Rs.15,000/- per month as medical and educational expenses to the petitioner/wife from the date of filing of the application.

4. Learned counsel for the petitioner/wife has contended that the petitioner has no independent source of income, and is solely dependent on the maintenance amount. She has to take care of the minor daughters and their educational and other expenses also. One of the daughters is suffering from blood cancer and requires constant medical care. Further, learned counsel has referred to the respondent's salary certificate for the month of March 2023, that shows he is getting salary of Rs.1,74,000/- per month; but paying a meager amount as maintenance. The petitioner and her daughters are entitled to similar lifestyle as is being enjoyed by the respondent, since they are his legally wedded wife and children. Keeping these facts in view, the amount of maintenance needs to be suitably enhanced.

5. Learned counsel for the respondent/husband, on the contrary, contends that the amount of maintenance granted is sufficient for taking care of the petitioner as well as her daughters. He, however, does not dispute that the respondent's salary as on date is about Rs.1,74,000/- per month, as also the fact that the elder daughter is suffering from blood cancer. The respondent has been providing all medical help to her and is ready to take care of her medical expenses. He further submits that the respondent/husband has other liabilities also, as he has re-married and has

another child out of the second marriage. He needs to take care of this family as well, and has limited income.

6. The submissions made by learned counsel for the parties have been considered.

7. Admittedly, the respondent/husband is earning salary of about Rs.1.74 lakhs per month and the petitioner/wife has no source of income. She is also required to take care of the two minor daughters, apart from bearing medical expenses of the one suffering from blood cancer. It is settled law that the wife and children are entitled to the same status and amenities as they were provided while being with the husband. Other liabilities of the respondent do not entitle him to claim any reduction in the amount of maintenance. The stated liabilities are only on account of his second marriage and the child born out of that wedlock. It is debatable whether respondent's second marriage, while he has first wife living, is valid or not, in spite of the parties being Muslim by religion. It also needs to be noted here that the Sessions Court, despite rejecting the argument raised on behalf of the respondent that there was no requirement for further increase in the amount of maintenance, failed to suitably enhance the amount and ended up only quantifying the petitioner's liability, which was fastened by the Magistrate, to pay for medical and educational expenses of his daughters.

8. Keeping the totality of facts and circumstances in view, this Court is of the considered view that the interim maintenance granted to the petitioner by the Magistrate, and quantified by the Sessions Court, needs to be enhanced to fifty per cent of the respondent's admitted salary.

Accordingly, the interim maintenance of Rs.40,000/- is enhanced to

Rs.87,000/- per month from the date of filing the application, which shall include all the expenses payable to the petitioner/wife, including medical and educational expenses for the daughters. The impugned judgment is modified in the above terms.

9. It goes without saying that this order shall not be taken as an expression of opinion on the merits of the case. The Magistrate shall decide the application independently on the basis of evidence led before it.

10. Since the complaint filed by the petitioner under the Act of 2005 is pending for the last more than five years, the Magistrate is directed to expedite proceedings of the case and conclude the same preferably within a period of four months from the date of receiving certified copy of this order.

11. Both the petitions stand disposed of.

12. Photocopy of this order be placed on the file of the connected case.

(TRIBHUVAN DAHIYA)
JUDGE

31.5.2023
Ashwani

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No