

In the High Court of Punjab and Haryana at Chandigarh

104

CRR(F)- 991 of 2022

Date of Decision: 15.02.2023

Dalbir Singh

---Petitioner

versus

Sunder Bala

---Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Amit Singla, Advocate
for the petitioner

JAGMOHAN BANSAL, J. (ORAL)

The petitioner, through the instant petition is seeking setting aside of order dated 20.08.2022 whereby Principal Judge Family Court, Fatehabad has allowed maintenance of Rs. 4,000/- per month to respondent-wife.

The brief facts of the case are that petitioner solemnized marriage with respondent on 05.07.2014 as per Hindu rites and ceremonies. No child was born out of this wedlock. Due to the reasons known to the parties, the wife left company of the petitioner and filed petition under Section 125 Cr.P.C. seeking maintenance. The matter came up for consideration before Family Court, Fatehabad which vide impugned order dated 20.08.2022 has awarded maintenance of Rs. 4,000/- per month.

Learned counsel for the petitioner inter alia submits that

the petitioner is suffering from cancer, thus, he is not able to pay maintenance to respondent. The entire income is spent on treatment, thus, he is unable to spare a sum of Rs. 4000/- per month.

I have heard learned counsel for the petitioner and perused the records.

The relevant extracts of order dated 20.08.2022 read as:-

“I do not find any merit in the contention of learned counsel for the respondent that since the respondent is suffering from Cancer, the applicant is not entitled to any maintenance. Firstly, there is not a whisper in the reply filed by the respondent that he is suffering from Cancer. It is only stated that he is ill but the nature of the sickness or its seriousness has not been mentioned. Secondly, no evidence has been led by the respondent that he is suffering from Cancer, in the form of medical record, examination of any doctor from whom he is getting treatment etc. Even he himself did not step into the witness box to testify that he is suffering from Cancer. Hence, the plea of the learned counsel in this regard cannot be accepted. Though as pointed out by the learned counsel for the respondent, the mother of the applicant Kamla in her cross-examination as AW-2 has admitted that the respondent is suffering from Cancer. However, the said admission is not sufficient to deny

maintenance to the applicant wife. During the cross-examination, it was not put to the witness that the respondent is incapable of earning anything due to the said Cancer. The respondent is suffering from Cancer of which organ and what stage has not been brought on record.”

The Family Court while passing impugned order has categorically recorded a finding that except bald averment, there is no evidence of suffering from cancer in the form of medical record. It is conceded fact that petitioner neither before the Family Court nor before this Court has placed on record medical record disclosing alleged disease. The petitioner has not even disclosed the organ which is suffering from cancer. In the absence of any medical record, it cannot be believed that petitioner is suffering from cancer. The respondent is legally wedded wife of the petitioner. The object of maintenance is to prevent the wife and children from being driven to destitution and vagrancy. The respondent being husband has social, ethical and statutory responsibility to maintain his wife. He cannot deflect from his responsibilities. The amount awarded by the Family Court is a meager amount, thus, there is no ground to interfere.

Dismissed.

(JAGMOHAN BANSAL)
JUDGE

15.02.2023

paramjit

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No