

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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CRR-F-408-2016 (O&M)
Date of decision: 14.09.2023

Sudarshan Singh

...Petitioner(s)

Vs.

Sunita Kumari

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Rohit Sapehiya, Advocate and
Ms. Deepika Chauhan, Advocate for
Mr. Rai Singh Chauhan, Advocate
for the petitioner.

Mr. Aditya Sharda, Advocate
for the respondent.

NIDHI GUPTA, J.

Prayer in the present revision petition filed by the petitioner-husband is for setting aside order dated 14.09.2016 passed by learned District Judge, Family Court, Pathankot whereby in an application filed by the respondent-wife under Section 127 Cr.P.C., the petitioner has been directed to pay Rs.6,000/- per month as maintenance from 26.10.2012 to 31.12.2014; Rs.8,000/- per month from 01.01.2015 to 14.09.2016; and Rs.12,000/- per month from 15.09.2016 onwards.

2. Learned counsel for the petitioner inter alia submits that the petitioner was married to the respondent on 31.07.1991. One son was born out of their wedlock on 10.05.1993, who has now attained majority. Admittedly, all through this time the son has been in the care and custody of the respondent-wife. Learned counsel states that respondent had first

filed a petition under Section 125 Cr.P.C. on 29.11.2003, which was allowed by the learned Judicial Magistrate, 1st Class, Pathankot vide order dated 04.03.2009 (Annexure P1) whereby final maintenance of Rs.2,000/- per month was granted to the respondent along with litigation expenses of Rs.3,000/-. Learned counsel submits that more than three years thereafter, the respondent-wife filed an application under Section 127 Cr.P.C. on 26.10.2012, seeking enhancement of above said compensation as awarded by learned Judicial Magistrate, 1st Class, Pathankot. It is submitted that vide impugned order dated 14.09.2016, the petitioner has been directed to pay Rs.6,000/- per month as maintenance from 26.10.2012 to 31.12.2014; Rs.8,000/- per month from 01.01.2015 to 14.09.2016; and Rs.12,000/- per month from 15.09.2016 onwards.

3. Learned counsel for the petitioner assails the impugned order primarily on the ground that respondent had also filed an application under Domestic Violence Act on 11.04.2015 which was allowed. It is submitted that accordingly, the petitioner is already paying Rs.6,000/- per month as maintenance + Rs.5,000/- per month as rent to the respondent under the Domestic Violence Act and therefore, the impugned order deserves to be set aside as the learned District Judge, Family Court, Pathankot was in error in awarding enhanced maintenance to the respondent.

4. Learned counsel further submits that the respondent had not approached the Court below with clean hands as, in her application under Section 127 Cr.P.C., the respondent had failed to disclose to the

learned District Judge, Family Court, Pathankot that she had also filed a petition under the Domestic Violence Act.

5. Learned counsel further submits that learned Family Court has committed error while passing the impugned order wherein amount of maintenance has been enhanced in three parts which is beyond the pleading and evidence. Learned Family Court awarded Rs.6,000/- per month from 26.10.2012 to 31.12.2014 which is without any substance and similarly amount of Rs.8,000/- per month awarded from 01.01.2015 to 14.09.2016 is also beyond any pleading and prayer made by the respondent. Thirdly, amount of Rs.12,000/- per month awarded from 15.09.2016 onwards is also beyond the pleading and learned Family Court has exceeded its jurisdiction while awarding the amount in such a manner which shows non-application of judicious mind.

6. Learned counsel further submits that the learned Family Court has failed to consider the evidence produced and contention as well as argument raised by the petitioner. It had specifically been submitted before the learned Family Court that the petitioner is in the Army and remained posted at remote border areas in the hills or deserts and maintained himself and his aged mother. Apart from that they have no source of income and totally dependent upon monthly salary of the petitioner. On the other hand, the respondent is engaged in tuitions and embroidery work and earns more than Rs.15,000/- per month. Keeping in view the totality of the circumstances, the lower Court had granted maintenance of Rs.2,000/- per month which was sufficient and adequate

but there was not even a single word in the impugned order in respect of contention raised by the petitioner and the amount has been enhanced without any evidence. It is submitted that the learned Family Court has not properly assessed the monthly income of the petitioner as well as deductions from his salary and thus erroneously passed the impugned order which is not sustainable and the same may be set aside.

7. Per contra, learned counsel for the respondent-wife submits that there was no error whatsoever in the impugned order. It is submitted that the petitioner is not paying anything by way of rent as the respondent is occupying her own premises. Learned counsel further submits that the respondent has maintained herself and her minor son through the years with meagre assistance from the petitioner. It is submitted that admittedly, in the month of January, 2011, basic pay of the petitioner was Rs.18,120/- and after getting DA, etc., his total salary was Rs.56,880/-. After deductions, Rs.38,994/- was being credited in his bank. It is contended that now vide the impugned order, the petitioner has been directed to pay only Rs.12,000/- per month as maintenance to the respondent; and including Rs.6,000/- per month under the Domestic Violence Act it comes to a total of only Rs.18,000/- per month and therefore, there was no error in the impugned order, hence the present petition deserves to be dismissed.

8. I have heard learned counsel for the parties.

9. Learned counsel for the petitioner is unable to dispute that as per Exhibit R2 which is the pay slip of the petitioner for January,

2011, basic pay of the petitioner was Rs.18,120/- and after getting DA, etc., his total salary was Rs.56,880/-. After deductions, Rs.38,994/- was being credited in his bank. Further, as per the pay slips for the months of January, 2016 to May, 2016 (Exhibit A3 to Exhibit A6), Rs.52,194/- was being credited in the account of the petitioner per month. In this view of the matter, I find no error in the grant of Maintenance of Rs.12,000/- (total Rs.18,000/- including the Rs.6000/- granted under the DV Act), as awarded by the impugned order. Moreover, admittedly, the respondent has maintained herself and her minor son (who has now attained majority) through the years. Petitioner has also been unable to prove the alleged income of the respondent wife. In view of the above facts, I find no error in the impugned order. Present petition accordingly stands **dismissed**.

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

14.09.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No