

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

107

CRR(F)-1622-2023(O&M)
Date of decision: 22.11.2023

Sanjay Kumar

...Petitioner

Versus

Anu Arora

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Munish Puri, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. The instant revision petition has been filed by the petitioner challenging the order dated 04.08.2023, passed by the learned Additional Principal Judge, Family Court, Amritsar (*for short 'Family Court'*), whereby an application filed by the respondent under Section 127(1) Cr.P.C. had been allowed and the amount of maintenance, which was previously ordered to be granted to the respondent @ Rs. 5,000/- per month, was ordered to be enhanced to the amount of Rs. 8,000/- per month from the date of application i.e. 10.01.2019.

2. Brief facts of the case relevant for the purpose of disposal of the present case are that the marriage between the petitioner and the respondent was solemnized in the year 1995. However, due to some temperamental differences, their alliance did not remain fruitful and a petition for divorce had been filed by the present petitioner, which was allowed, vide judgment and decree dated 16.04.2015 and the marriage between the parties was dissolved. The respondent had filed an application

for grant of maintenance and vide order dated 01.06.2017, she was granted maintenance to the tune of Rs. 5,000/- per month, which was to be paid by the present petitioner. He had been paying the same to her ever since then. However, subsequently the respondent filed an application under Section 127(1) Cr.P.C. seeking modification in the order dated 01.06.2017 and for enhancement in the amount of maintenance thereby granted. The Family Court, vide order dated 04.08.2023, partly allowed the said application and enhanced the amount of maintenance to Rs. 8,000/- per month.

3. Learned counsel for the petitioner has argued that the impugned order was not sustainable as the Family Court did not properly appreciate the material placed on record by the respondent during the proceedings of the application filed under Section 127(1) Cr.P.C. It had relied upon the Income Tax Return of the petitioner pertaining to financial year 2016-17, which showed his annual income to be Rs. 2,19,000/- without considering the fact that after the outbreak of COVID-19 pandemic, the petitioner had lost his business and was not making any earning and even the respondent had admitted that he did not have any shop for running his business. He further argued that the Family Court erred in holding that the respondent was not earning anything, though in her cross-examination, she had herself admitted that she had been giving tuition to small children at home. Therefore, the fact that she had sufficient source of earning was proved. With these submissions, the petitioner has argued that the impugned order is liable to be set aside and he is not liable to pay enhanced amount of maintenance to the respondent.

4. I have heard learned counsel for the petitioner and have gone

through the material placed on record very carefully. It is revealed from the documents annexed with this petition that the respondent had filed a petition for grant of maintenance, which had been decided in her favour, vide order dated 01.06.2017 and direction was given to present petitioner to pay maintenance @ Rs. 5,000/- per month to her. It is further revealed that the respondent subsequently filed an application under Section 127(1) Cr.P.C. for enhancement of monthly maintenance from Rs. 5,000/- to Rs. 10,000/-. A perusal of order dated 04.08.2023, which had been passed in the said application by the Family Court, reveals that the said application had been duly contested by the present petitioner and both the parties were given opportunities to lead evidence in support of their respective pleas. The Family Court, after taking into consideration the pleadings and the evidence led by the parties, had come to a conclusion that the annual income of the petitioner for the financial year 2016-17, as per Income Tax Return (Mark 'X'), was Rs. 2,19,050/-. It was observed that there must have been some increase in the income of the petitioner in the subsequent years. It is also revealed that the present petitioner had not produced any affidavit or any other document in the form of ITR etc. to show that there was any decrease in his income from the one, which was earned by him during the financial year 2016-17. Under Section 173(1) Cr.P.C., any person receiving a monthly maintenance allowance or interim maintenance under Section 125 Cr.P.C. can seek alteration in the said amount and the Magistrate may make such alteration, as he thinks fit. An exception has been carved out in the form of Sub Section 3 of Section 127, as per which, the Magistrate may cancel the order of grant of maintenance, if the woman, who has been

granted maintenance under Section 125 Cr.P.C., has re-married after the date of the divorce. It is not the case of the petitioner here that the respondent has re-married after passing of a decree of divorce between the parties.

5. The order, granting maintenance to the tune of Rs. 5,000/-, was passed in favour of the respondent on 01.06.2017 as already mentioned above. A period of more than seven years has passed since then. Of course, there is increase in the price index ever since then. The respondent is shown to have admitted while recording her statement in the proceedings under Section 127(1) Cr.P.C. that she had been giving tuition to small children at home. However, from her statement, it has not been made out as to how much amount is she earning from the same and as to whether the same is sufficient to maintain her. It is well settled proposition of law that even the divorced wife is entitled to maintenance if she has not re-married. The amount of Rs. 5,000/- was directed to be paid by the petitioner to the respondent in the year 2017 while keeping in view his annual income as reflected in ITR for the financial 2016-17. It can reasonably be presumed that the income of the petitioner has increased thereafter. As a result thereof, due to escalation in the price of essential commodities, the respondent of course requires enhancement in the maintenance so granted to her as she entitled to live a life of the same standard, which she lived while she was with her husband and also to live a life of dignity.

6. Taking all the aforesaid factors into consideration, this Court is of the opinion that amount of maintenance of Rs. 8,000/- per month, which was directed to be paid by the petitioner to the respondent by way of

enhanced maintenance, is quite appropriate and cannot be said to be excessive. Rather, the same is the minimum, which could be granted while taking into consideration the rising prices of essential commodities. As such, finding no merit in the petition, the same is dismissed.

22.11.2023
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>