



CRR(F)-535-2022 (O&M)

1

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

CRR(F)-535-2022 (O&M)

Date of decision: 16.12.2024

RENU DEVI

... PETITIONER

V/s

SHYAM LAL @ SHYAM SUNDER

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Joginder Siwach, Advocate
for the petitioner.

None for the respondent.

SUMEET GOEL, J.

1. The challenge in the present criminal revision is laid against the order dated 22.11.2021 passed by the Additional Principal Judge, Family Court, Hisar, in case bearing CIS No. MNT/92/2018. The petitioner, along with her two minor sons, filed petition No. 44-III of 2018 before the Family Court under Section 125 Cr.P.C. against her husband (the respondent), seeking maintenance. It is averred in the petition that the marriage between the petitioner and respondent was solemnized on 05.04.2011. Three children were born out of the wedlock of the petitioner and respondent. Two of the minor children, i.e., sons, were made parties in the petition before the

**CRR(F)-535-2022 (O&M)**

2

Family Court. The pleadings of the parties disclose that the third child is a female, however, a perusal of the record does not clarify the status of the third child in relation to the maintenance proceedings.

2. In the petition before the Family Court, the petitioner alleges that a huge amount of Rs. 3 lacs was spent by her parents on her marriage to the respondent. A few months after the marriage, the petitioner was subjected to cruelty, maltreatment, and atrocities by the respondent and his family members. It is further alleged that on 05.02.2018, the petitioner, along with her two minor sons, was thrown out of her matrimonial home, and since then, the petitioner along with her minor sons have been living separately. The petition states that the petitioner and her minor sons are living in a rented accommodation in village Talwandi Rana, and the petitioner has no movable or immovable property or any other source of income to sustain herself. Further, it is alleged that the respondent is an able-bodied person who owns 11 acres of fertile agricultural land and earns Rs. 3 lacs per annum. He is also involved in the business of buying and selling buffaloes and running a milk dairy, from which he earns Rs. 40,000 per month. The petitioner states that she and her two minor sons require Rs. 25,000 per month as maintenance for their sustenance.

3. The respondent filed a reply to the claim before the Family Court, wherein he admitted the fact of the marriage and the birth of children. However, he denied the allegations of cruelty and

**CRR(F)-535-2022 (O&M)**

3

dowry demands made by the petitioner. The respondent stated that the petitioner left the matrimonial home on her own, without any just cause, and despite efforts made by him, including convening a panchayat to bring her back, he was threatened with false implication in cases. In his reply, the respondent also alleged that the petitioner was running a beauty parlour and earning Rs. 10,000 per month. The respondent denied owning 11 acres of agricultural land and also denied being involved in the business of trading in buffaloes or running a milk dairy.

4. However, after filing the reply to the maintenance petition, the respondent did not appear in the proceedings and was proceeded against ex-parte. The petitioner adduced evidence in line with her pleadings in the claim petition, examining herself as PW-1, and subsequently closed her evidence. Apart from her affidavit of Examination-in-Chief, no other documentary evidence was adduced on behalf of the petitioner.

5. On the strength of the evidence led by the petitioner, which went unrebutted due to the respondent being proceeded against ex-parte and his absence during cross-examination, the Family Court held that the petitioner was residing separately from the respondent due to the acts of cruelty committed against her by the respondent. It was further held that the petitioner was unable to maintain herself. Therefore, in view of these two aspects having been decided in

**CRR(F)-535-2022 (O&M)**

4

favour of the petitioner, she was held entitled to seek maintenance from the respondent.

6. On the aspect of the quantum of maintenance to be awarded to the petitioner, the Family Court held that the petitioner had failed to adduce any evidence to support her allegations that the respondent is earning Rs. 40,000 per month. The Family Court further noted that the petitioner had not provided any evidence to prove the respondent's ownership of agricultural land or his involvement in the buffalo trading and dairy business. Therefore, assuming the respondent's income to be equivalent to the minimum wages granted to an unskilled laborer, the Family Court awarded an amount of Rs. 3,000 per month to the petitioner and Rs. 1,500 per month to each of the two children (petitioners No. 2 and 3) as maintenance.

7. The Family Court took note of the admitted fact between the parties that the minor children, petitioners No. 2 and 3 before the Family Court, resided with the petitioner only until February 2021 and, thereafter, from March 2021, were residing with the respondent. In view of this, the Family Court held that the petitioner was entitled to recover maintenance for the minor children only up to February 2021. However, the petitioner was held entitled to receive maintenance at the rate of Rs. 3,000/- per month from the respondent until she remarries. Additionally, Rs. 5,500/- was granted to the petitioner as litigation expenses.

**CRR(F)-535-2022 (O&M)**

5

8. Aggrieved by the amount of maintenance granted by the Family Court to the petitioner, which she considers inadequate, the petitioner has filed the present petition seeking enhancement of the said compensation. Along with the petition, a copy of the Jamabandi for the year 2016-17, Village Jhumpa Kalan, Tehsil Siwani, District Bhiwani, is also filed as Annexure P-1, to substantiate the claim of the respondent's ownership of agricultural land.

9. On behalf of the petitioner, it is argued that the amount awarded to the petitioner as maintenance, being a paltry sum, is not sufficient for her sustenance. She is not able to maintain herself on the meagre sum of Rs. 3000 per month. However, no document or evidence has been filed in the present revision petition to prove the alleged occupation of the respondent regarding running the buffalo trading and dairy business. The Jamabandi (Annexure P-1) filed with the petitioner is not a document tendered in evidence, before the Courts below and thus, the evidentiary value of the same remains unproved. However, in order to advance the cause of justice, this Court took into consideration the said Jamabandi as a public document. The name of the respondent is mentioned as a co-sharer in the land measuring 86 kanals and 8 marlas. However, out of the total land mentioned in the Jamabandi, 86 kanals and 4 marlas are shown as Gair Majrua Tibba, and the rest 4 marlas are shown as Gair Mumkin. In the translated version of the said Jamabandi filed with the present Revision Petition, the type of land is mentioned as 'Gair

**CRR(F)-535-2022 (O&M)**

6

Makbooja', which is apparently a wrong translation of 'Gair Majrua'. As such, in view of the nature of the land mentioned in the Jamabandi, it cannot be held that the land owned by the petitioner is cultivable, and accordingly, the petitioner cannot be said to be earning any amount by cultivating the said land.

10. As regards the argument raised concerning the inadequacy of the amount of maintenance granted to the petitioner, no evidence regarding the income of the respondent has been adduced on record. Therefore, in my considered opinion, the Family Court correctly granted the maintenance by evaluating the income of the respondent equivalent to the minimum wages of an unskilled laborer. The maintenance awarded is bound to be commensurate with the income and liabilities of the respondent. It is an admitted case of the parties that two of the minor children, who were initially made petitioners in the petition under Section 125 Cr.P.C. by the present petitioner, have since shifted to the custody of the respondent during the pendency of the proceedings before the Family Court. Besides that, the third child of the parties, i.e., the minor female child, is also presumed to be in the custody of the respondent, as she has not been made a party either to the petition under Section 125 Cr.P.C. before the Family Court or in the present revision petition. Therefore, in view of these facts, the respondent, besides earning his living, is supposed to devote time to the care and well-being of the minor children and his other responsibilities in life. Therefore, in view of

**CRR(F)-535-2022 (O&M)**

7

the facts and circumstances of the present case, the amount of maintenance already granted to the petitioner by the Family Court cannot be held to be inadequate given the status and earnings of the respondent.

11. In view of my above findings, there is no illegality or perversity in the impugned order passed by the Family Court, so as to warrant any interference by this Court. Accordingly, the present criminal revision petition is dismissed for being devoid of merit.

12. Pending application(s), if any, shall also stand disposed of accordingly.

(SUMEET GOEL)
JUDGE

December 16, 2024
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No