

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

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CRR-677-2023 (O&M)
Date of decision: 01.03.2024

Navdeep Kaur ...Petitioner

Versus

Harmail Singh alias Ghula Singh ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. G. S. Saini, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. CRM-12045-2023

Prayer in this application is for condoning the delay of 278 days
in filing the present revision petition.

For the reasons stated in the application, the same is allowed and
the delay of 278 days in filing the present revision petition is condoned.

2. CRR-677-2023 (O&M)

The present revision petition has been filed by the petitioner-wife
against the order dated 13.09.2021, passed by the learned Additional Sessions
Judge, Bathinda, whereby her appeal filed under Section 29 of the *Protection
of Women from Domestic Violence Act, 2005* (for short 'the Act'), for
modification in the order 13.04.2018, passed by the Judicial Magistrate First

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Class, Bathinda in case bearing COMA/896/2016, thereby enhancing the amount of maintenance as well as one time compensation, was dismissed.

3. Brief facts of the case relevant for the purpose of disposal of the present petition are that the marriage of the petitioner was solemnized with the respondent in the year 1991. Out of the wedlock, a son was born, who is now aged about 29 years and is residing with the petitioner. However, the matrimonial relations between the parties became sour and the petitioner was turned out of the matrimonial house and has been residing separately since 2014. She had filed an application under Section 125 Cr.P.C. claiming grant of maintenance from the respondent, which was allowed on 23.12.1996. However, subsequently a compromise was arrived at between the parties and the petitioner started residing with the respondent along with her son and the said maintenance application was withdrawn. However, again some matrimonial discord had arisen between them and the petitioner had filed an application under Sections 12 and 18 of the Act before the Court of Judicial Magistrate First Class, Bathinda against the present respondent and one Tejwant Kaur, who is sister-in-law (*Jethani*) of the petitioner. Vide order dated 13.04.2018, while dismissing the said application qua respondent No. 2 (Tejwant Kaur), the following order was passed by the trial Court:

“...24. Accordingly, in view of above discussion, this Court is of the view that the evidence led by the applicant is not sufficient to hold responsible respondent no.2. Therefore, present application against respondent no. 2 is dismissed. But the evidence led by the applicant is sufficient to hold responsible respondent no.1 for committing acts of domestic violence.

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25. As regard the claim of maintenance, respondent no.1 has specifically admitted in his affidavit dated 11.12.2017 that he is owner of approximately 50 ½ kanals of land and is also earning Rs.21,600/- per month. While the applicant has admitted in her cross-examination that buffalo was given to her. She has also admitted that she sells milk and voluntarily admitted that she sell milk of Rs.50/- daily. She also admitted photographs mark B to E in which she is selling milk. In the report Ex. D1 submitted by Rajinder Kumar Gupta, Draftsman on the instruction of this Court, it has been specifically mentioned that two buffaloes were standing in this house. In today's scenario, the cost of 1 litre milk is Rs.40/- to Rs. 60/- per litre and if the applicant is having two milking buffaloes and even if she is selling 5 to 10 kgs. of milk daily, she will be earning around Rs.250/- to Rs.500/- daily, ranging from Rs.7500/- to Rs.15,000/- per month. However, as per settled law, husband is morally as well as legally bound to maintain her wife and children. So, in view of the present set of circumstances and keeping in view of the rising cost index and inflation, respondent no.1 is directed to pay Rs.5,000/- per month as maintenance to the applicant starting from the date of passing of this order. As it is admitted fact that the son of the applicant is major and is M.A., B.ed. so no maintenance can be granted to the son of the applicant being major.

26. In the affidavit Ex. AX tendered by applicant, she has stated in para no.2 that she is in possession of house situated at village Nehianwala, District Bathinda, consisting of three rooms, Varandha and kitchen, which was given by the Panchayat to her for her residence from the possession of the respondent, which means that she has also proved that compromise has been effected between

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her and respondents with regard to same in front of Panchayat. So, the respondent no.1 is restrained from dispossessing the applicant from the residential house. However, if the applicant want to reside separately, then the applicant is at liberty to claim Rs.2,000/- per month from the respondent no.1 for the payment of rent for any rented accommodation in which the applicant may choose to reside.

27. As the physical and mental cruelty at the hands of respondent no.1 has been proved by the applicant, so the applicant is also entitled to Rs.3,000/- as compensation. So, an amount of Rs.3,000/- is allowed to her as compensation for maltreatment.

28. Protection order is passed in favour of the applicant and the respondent no.1 is prohibited from committing any act of domestic violence against the applicant.

29. The respondent no. 1 is further directed to pay a sum of Rs.2000/- as litigation expenses to the applicant. Remaining reliefs sought by the applicant are hereby dismissed being not pressed.

30. Accordingly, in view of my above discussion, present application is allowed qua respondent No. 1 and application qua respondent no. 2 is dismissed. Copy of this order be sent to the SHO concerned and he is directed to assist the applicant in the implementation of the protection order. File be consigned to record room after due compliance.”

4. Thereafter, the petitioner preferred an appeal seeking enhancement of the maintenance amount so granted by the trial Court, vide order dated 13.04.2018, from Rs. 5,000/- to Rs. 15,000/- per month and also seeking enhancement of one time compensation from Rs. 3,000/- to

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Rs. 1,00,000/-. The respondent-husband had also preferred an appeal seeking reduction of the maintenance amount awarded by the trial Court. Both the appeals were heard together by the lower appellate Court and ultimately both of them were dismissed by passing the impugned order dated 13.09.2021, thereby upholding the order passed by the trial Court. While dismissing the appeal of the petitioner, it was observed that it has come on record that the petitioner had been provided a good accommodation by the respondent-husband along with certain heads of cattle and the son of the petitioner had already grown up and after completing his education had settled abroad and, therefore, there was no additional burden on the petitioner. Aggrieved from the same, the petitioner has preferred the present revision petition.

5. Learned counsel for the petitioner has argued that the impugned order is not sustainable in the eyes of law as the lower appellate Court has failed to appreciate the fact the petitioner has been residing separately from the respondent since 2014 and she has no source of income and the maintenance as well as one time compensation, awarded by the trial Court, are on very lesser side and the same is liable to be enhanced. Therefore, it is urged that the present petition deserves to be accepted, the order passed by the trial Court needs to be modified and the maintenance granted to the petitioner deserves to be enhanced as prayed by her.

6. I have heard learned counsel for the petitioner at considerable length and have also gone through the material placed on record very carefully.

7. It is an admitted fact that the marriage between the petitioner and the respondent was solemnized in the year 1991 but due to some differences

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between them, they started living separately, pursuant to which the petitioner had filed an application under Sections 12 and 18 of the Act against the respondent-husband and her sister-in-law (Jethani) Tejwant Kaur. The trial Court, after appreciating the entire material and evidence brought on record, had dismissed the application qua Tejwant Kaur but it was allowed qua respondent-husband and he was held guilty for committing acts of domestic violence. The trial Court, vide order dated 13.04.2018, had awarded monthly maintenance as well as one time compensation to the petitioner as mentioned above. The petitioner preferred an appeal for enhancement of the maintenance amount before the lower appellate Court but the same had been dismissed, vide order dated 13.09.2021. The intent behind granting maintenance/alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as punishment to the other spouse. The financial capacity of the husband, his actual income with reasonable expenses for his own maintenance, and dependant family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration to arrive at the appropriate quantum of maintenance to be paid. It is settled law that balance and equity must carefully be drawn between all relevant factors. The test of determination of maintenance in matrimonial disputes depends on the financial status of the respondent and the standard of living that the petitioner was accustomed to in her matrimonial home.

8. In the present case, it is admitted fact that the petitioner has been residing separately since 2014 and she has been provided with an accommodation by the respondent-husband. It is also not disputed that the

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child of the parties, namely Hardeep Singh, was major at the time of filing application before the trial Court and he has now settled abroad. Thus, there is no burden on the petitioner with regard to maintaining her son. After appreciating the material on record, it is apparent that the lower appellate Court has rightly come to the conclusion that the petitioner has been granted sufficient monthly maintenance amount by the trial Court as there is no additional burden on her but to maintain herself only, for which, the maintenance so granted by the trial Court is sufficient as she has been residing in the accommodation provided by the respondent and the respondent has also given her some heads of cattle and on selling the milk produced by them, she is generating some income. Keeping in view the above facts, this Court does not find any cogent reason to interfere with the impugned judgments passed by the Courts below since neither there is any illegality, impropriety or error apparent on record nor any change in circumstances.

9. Accordingly, the present petition is dismissed.

01.03.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No