

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Date of order: 25.04.2024

CRR-F-591-2023(O&M)

Dinker Sehgal

.....Petitioner(s)

Vs.

Latika Sehgal

.....Respondent(s)

CRR-F-598-2023(O&M)

Latika Sehgal

.....Petitioner(s)

Vs.

Dinker Sehgal

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Rajesh Kumar Moudgil, Advocate
for the petitioner/husband

Mr.Jatinder Nagpal, Advocate
for the respondent/wife.

Nidhi Gupta, J.

CRR-F-591-2023

Challenge in the present petition filed by the **husband** is to judgment dated 10.02.2023 passed by learned Additional Principal Judge, Family Court, Patiala, whereby in a petition filed by the respondent/wife under Section 125 Cr.P.C the petitioner/husband has been directed to pay Rs.15,000/- per month to the respondent as maintenance

from the date of filing the petition, i.e., the year 2016, plus Rs.11,000/- as cost of litigation.

CRR-F-598-2023

Prayer in the present petition filed by the **wife** is for enhancement of maintenance of ₹15,000/- per month granted in a petition under Section 125 Cr.P.C. vide judgment dated 10.02.2023 passed by learned Additional Principal Judge, Family Court, Patiala, from the date of filing the petition, i.e., 11.11.2016 plus Rs.11,000/- as cost of litigation.

2. Both the above petitions are being disposed of by this common order as facts, issues, parties and impugned order in both the cases are identical. For the sake of convenience, the parties are being referred to, and facts are being taken from CRR-F-591-2023, filed by the husband.

3. Learned counsel for the petitioner/husband inter alia submits that the petitioner was married to the respondent on 24.07.2016. No child was born out of this wedlock. It was the second marriage of both the parties. It is stated that barely after two months of the marriage the respondent left the matrimonial home, although she had no reason whatsoever to leave company of the petitioner. Thereafter on 11.11.2016, the respondent filed the present petition under Section 125 Cr.P.C. whereby vide the impugned order dated 10.02.2023 passed by learned Additional Principal Judge, Family Court, Patiala, the respondent has been

granted final maintenance of Rs.15,000/- per month along with litigation cost of Rs.11,000/-.

4. Learned counsel for the petitioner/husband submits that although there was a strain in the matrimonial relationship between the parties, however, the respondent had no cause to leave the matrimonial home. In this regard, learned counsel points out that the respondent had filed a complaint case bearing No.COMI/226/2016 under Sections 498-A and 406 IPC, against the petitioner and his family members, being his aged and widowed mother, sister and one other relative of the petitioner. All the accused were discharged after seven years of trial vide judgment dated 28.02.2023 passed by learned Judicial Magistrate, 1st Class, Patiala (Annexure P2). In the said judgment it has been recorded by learned Judicial Magistrate, 1st Class, Patiala, as under:-

“11....Further, the complainant has stated in her cross examination that she does not remember how much amount was demanded by the accused for purchase of Kothi and also admitted that she has no problem with her husband and her mother in law, but has problem with her sister in law. Therefore, the entire case been demolished by the complainant herself.”

5. It is contended that thus, the respondent had left the matrimonial home of her own accord; and therefore, she is not entitled to maintenance.

6. It is further submitted that in the above said complaint case only, the respondent in her cross-examination before the learned

Judicial Magistrate, 1st Class, Patiala, has also admitted that she had no problem with the petitioner. In this regard, learned counsel refers to the cross-examination of the respondent in the complaint case No.COMI/226/2016 before the learned Judicial Magistrate, 1st Class, Patiala (Annexure P3), wherein she has inter alia admitted as under:-

“.....It is correct that have not attached a single bill in order to show that Rs. 10,00,000 (Ten lacs) were spent on the marriage. I am ready to live with my husband. I have no problem with my husband and I want to live with my husband. My husband used to beat me on the instance of my sister in law otherwise he does not beat me. I was living happily with my husband.....It is correct that I have not mentioned in my complaint and examination in chief as to that Rs. 5,00,000/- (Five Lacs) which I got at the time of divorce of my first marriage were given to Dinkar Sehgal.....It is correct that the accused persons does not demanded any thing before marriage.....It is correct that I have no problem with my husband and my mother in law. I have problem with my sister in laws.....It is correct that accused never demanded Verna Car and cash for purchasing Kothi before marriage vol. said demand was made after marriage.....I did not receive any injury on my body and I also did not got any blood on my body due to which in did not got my self medically examined from any doctor. Vol said due to slap, there was no any injury mark or blood on my body that is why I did not go to Doctor....”.

7. It is contended that accordingly, in view of the above admissions of the respondent herself, no cause whatsoever is made out for the respondent to leave the matrimonial home, and therefore she is not entitled to maintenance. It is reiterated that clearly, the respondent had

left matrimonial home voluntarily without any instigation on part of the petitioner; and she is therefore, not entitled to maintenance.

8. Learned counsel further points out that the respondent has also admitted in her above said testimony that she had also received ₹5 lakhs as settlement from her previous husband. It is argued that the respondent is habitual of doing this; and it is therefore, clear that the respondent has filed the present petition under Section 125 Cr.P.C. only to extract money from the petitioner.

9. Learned counsel for the petitioner further points out that admittedly, the respondent is a qualified B.A. L.L.B. It is contended that for this reason also, the respondent is not entitled to maintenance, as she is capable of maintaining herself.

10. Learned counsel further states that now in the execution proceedings bearing No.CRM/329/2023 pending before the learned Additional Principal Judge, Family Court, Patiala, vide order dated 28.07.2023 1/3rd salary of the petitioner has been attached. Learned counsel submits that since the past seven years, the petitioner has paid an amount of approximately Rs.8 lakh to the respondent till date. This fact has been admitted by the respondent herself in her affidavit dated 21.12.2023 filed in the Transfer petition seeking transfer of the petition filed by the petitioner under Section 13 of the Hindu Marriage Act from Patiala to Chandigarh, wherein she has stated in Para 6 thereof that “..after counting the payment of above mentioned two cheques, though not encashed,

comes to Rs.7,84,140/-...". The next date of hearing in the execution petition is 14.05.2024.

11. Learned counsel for the petitioner submits that besides the present amount of maintenance of ₹15,000 per month, in a petition filed by the respondent under the Domestic Violence Act the petitioner is also paying Rs.6,500/-per month as maintenance to her. It is stated that accordingly, the petitioner is facing great hardship and prays that the impugned order be set aside.

12. Per contra, learned counsel for the respondent/wife submits that connected petition bearing CRR-F-598 of 2023 has been filed by the wife, seeking enhancement of final maintenance of Rs.15,000/- per month as granted vide impugned order dated 10.02.2023. In this regard, learned counsel for the respondent submits that the petitioner/husband is a regular Government employee and is working as a Data Entry Operator in Punjab School Education Board, Vidya Bhawan, Phase-8, SAS Nagar, Mohali and his salary certificate for the month of October, 2022 (Ex.P14), as per which the petitioner is drawing a gross salary of Rs.75,190/- and net salary of Rs.54,847/-. Besides the above said salary, he is also getting disability pension of Rs.16,000/- per month as the petitioner is an Ex-Serviceman and therefore, the petitioner is earning more than Rs.70,000/- per month from the above sources. Besides that, the petitioner is also a man of means as he has a huge bank balance etc. It prayed that accordingly, the impugned maintenance of ₹15,000 per month, be enhanced.

13. No other argument is made on behalf of the parties.

14. I have heard learned counsel for the parties and perused the case file in detail.

15. The undisputed facts on record are that the parties were married on 24.07.2016. It is admitted that the parties started living separately barely two months after marriage. No child was born out of their wedlock. It has also not been denied by counsel for the respondent/wife that the respondent is a qualified BA-LL.B; or that petitioner has paid almost ₹8 lakhs as maintenance to the respondent till date; or that respondent is also drawing maintenance from the petitioner under the DV Act. It is also recorded in Para 13 of the impugned order dated 10.02.2023 that besides the impugned maintenance of Rs.15,000/- per month, the respondent is also getting Rs.6,500/- per month as maintenance in a petition filed by her under the Domestic Violence Act.

16. Section 125 Cr.P.C. stipulates that: –

“125. Order for maintenance of wives, children and parents:-

(1) If any person having sufficient means neglects or refuses to maintain:-

a) his wife, unable to maintain herself, or

b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.”

17. A bare reading of the above provision shows that in order to be eligible for maintenance, it is mandatorily required that the wife be ‘unable to maintain herself’. In the present case, that is not so. It is the admission of the respondent herself in her cross-examination conducted in the present petition under Section 125 Cr.P.C., as follows:-

“I am idle now. I am BA LLB passed from Punjabi University. But I have not received degree of law. However, I passed LLB in the year 2022. I am residing with my parents since 2016.....”.

18. Thus, it is the case of the respondent herself that she is idle and is not making any effort to maintain herself. At this stage, reference may be made to judgment of the Karnataka High Court in “**Smt. Shilpashree J. M. Vs. Gurumanjunatha A.S.**”, 2023 SCC OnLine Kar 36, Law Finder Doc ID # 2260157 wherein it has been held as under:-

“8. The records also disclosed that before marriage petitioner No.1 was working as is evident from her cross examination. Her cross examination also reveals that she was residing along with her mother. It is also evident from her admission that, even after her desertion she continued to stay in the rented house along with her mother itself and the allegation does establish that she was not interested to stay with respondent Nos. 2 to 4. It is an admitted fact that at the instance of the present petitioner No. 1, a separate house was taken on rent and now the petitioners i.e., wife and child

are residing therein along with her mother, but she was reluctant to stay with her mother-in-law and unmarried sister-in-law. It is an admitted fact that respondent No. 1- husband is running provision stores. Further, he is having responsibility of taking care of his mother and unmarried sister. Admittedly, the petitioner No. 1 was working prior to her marriage and it is asserted that after marriage she resigned the said job. But, there is no explanation as to why she is incapable of working now. She is not supposed to sit idle and seek entire maintenance from her husband and she is also legally bound to make some efforts to meet her livelihood and she can seek only supportive maintenance from her husband".

(Emphasis supplied)

19. Reliance may also be placed upon judgment of the Hon'ble Supreme Court in case of "**Bhushan Kumar Meen v. Mansi Meen Allas Harpreet Kaur**" (SC) : **Law Finder Doc Id # 547724**. In the said case too, the wife albeit well qualified, was not working. Accordingly, the Hon'ble Supreme Court had held that "*However, having regard to qualifications that Wife possesses, there is no reason why she ought not to be in a position to also maintain herself in future...*", and had accordingly reduced the amount of interim maintenance granted to the respondent wife.

20. Reliance may be placed upon another judgment of Hon'ble Supreme Court in "**Anu Kaul Vs. Rajeev Kaul**" **Law Finder doc ID # 183207**, wherein it has been held as under:-

"Hindu Marriage Act, 1955, Section 24 - Enhancement of Maintenance - Appellant wife granted Rs. 10,000 towards

litigation expense and Rs. 2000 for maintenance of minor child
- Wife claiming enhancement - Held that :-

1. Wife drawing salary Rs. 9000 per month hence interim maintenance awarded to her cannot be enhanced.

2. Considering child being daughter of highly placed officer, the exorbitant fee structure in good schools and cost of living, maintenance of child enhanced to Rs. 5000 per month."

21. It is clearly found in the present case that the respondent is an able-bodied and well-qualified lady. However, she *chooses* not to work. It is her own admission before the learned Court below that "*I am idle now*", as evidently she has enough means to sustain herself. Needless to say, it is the first and foremost duty of the respondent herself to maintain herself. It is not just the beholden duty of the husband to maintain the wife in such circumstances. It has been stated by counsel for the respondent/wife that she does not have a license. However, it has also been admitted that she has not applied for the license to practice.

22. Furthermore, Section 125 (4) CRPC stipulates as follows:-

"4. No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,]from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent."

23. A perusal of the above facts/evidence/testimony/cross-examination of the respondent, referred to by learned counsel for the husband, clearly show that the respondent left the matrimonial home of

her own free will and volition, whim and caprice, without any reasonable cause or instigation by the husband. In such a situation, as per provision of section 125 (4) Cr.P.C., it cannot be held that the respondent is entitled to maintenance.

24. In this regard, reference may be made to judgement of the Jharkhand High Court in case of **Criminal Revision No.512 of 2023** titled as **“Amit Kumar Kachhap vs Sangeeta Toppo”** LL Citation: 2024 LiveLaw (Jha) 33, Law Finder Doc ID # 2485918, wherein it has been held that: –

“In view of the overall evidence adduced on behalf of both the parties, it is found that the respondent-applicant has been residing aloof from the husband without any reasonable cause. Accordingly, this point of determination is decided in favour of the petitioner-husband and against the opposite party-wife. In consequence thereof, in view of Section 125 (4) of the Code of Criminal Procedure, 1973 she is not entitled to any amount of maintenance.”

25. No case law to the contrary has been shown to this Court by learned counsel for the respondent-wife.

26. It may also be pointed out that while granting the impugned maintenance to the respondent-wife the learned Additional Principal Judge committed an error in considering the disability pension of the petitioner as ‘income’ as, the said amount granted to the petitioner is meant for medicinal purposes and other miscellaneous expenses on account of knee injury suffered by the petitioner. Further, learned Additional Principal Judge also lost sight of the fact that the petitioner was

not in a pensionable job. Moreover, the impugned maintenance has been granted from the date of application whereas the net amount received as salary by the petitioner in December, 2016 was Rs.36,726/- (Annexure P6). It is the considered view of this Court that these are all relevant factors which have not been considered in the correct perspective by the learned Additional Principal Judge while passing the impugned order.

27. As such, in view of the above undisputed factual and legal position, CRR-F-591-2023 filed by the **husband** is **allowed**, and the impugned order dated 10.2.2023 passed by the learned Additional Principal Judge, Family Court, Patiala is set aside; and CRR-F-598-2023 filed by the **wife** is **dismissed**.

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

25.04.2024
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No