

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR-F-508-2024(O&M)

Date of order: 10.04.2024

Vandna Rani

.....Petitioner(s)

Vs.

Sandeep Popli

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Kshitiz Goel, Advocate
for the petitioner.

Nidhi Gupta, J.

Prayer in the present petition is for modification of order dated 15.03.2024 passed by learned Principal Judge, Family Court, Sirsa, whereby in a petition filed by the petitioner/wife under Section 125 Cr.P.C., the learned Family Court has directed the respondent/husband to pay Rs.5,000/- per month as final maintenance allowance from the date of petition along with litigation expenses of Rs.5,000/- to petitioner/wife.

2. Learned counsel for the petitioner inter alia submits that the maintenance as granted by the impugned order is on the lower side. It is stated that the petitioner was married to the respondent on 02.04.2009. No child was born out of this wedlock. It was the second marriage of both the parties. Due to matrimonial differences, the parties started living separately since April, 2012. Learned counsel submits that the petitioner has no means to maintain herself and in today’s time of increased expenses, amount of Rs.5,000/- per month is grossly insufficient. It is

accordingly prayed that the impugned order be modified, and the impugned maintenance be enhanced.

3. No other argument is made on behalf of the petitioner.

4. I have heard learned counsel for the petitioner and perused the case file in detail.

5. Perusal of record of the case shows that the petitioner is 40 years old whereas the respondent is a senior citizen of 60 years of age. After separating in April, 2012, the petitioner had registered FIR No.1127 dated 13.11.2018 under Sections 323, 406 and 498-A IPC at Police Station City Sirsa against the respondent. On 30.11.2018 itself, the petitioner had filed the petition under Section 125 Cr.P.C. seeking maintenance allowance from the respondent. On a direct Court query as to how the petitioner maintained herself from the date of separation i.e. April, 2012 till date of passing of impugned order, learned counsel for the petitioner submits that the petitioner had maintained herself with great difficulty.

6. However, a perusal of the record of the case shows that the learned Family Court on the basis of the pleadings and evidence led by the parties, has found as under:-

“12. As far as the liability of the respondent to maintain the petitioner is concerned, it is trite that if the wife is not able to maintain herself, the husband is liable to provide for her maintenance and he cannot neglect his duty in this regard. The only issue that found remains to be decided is the respective earning capacities/financial positions of the parties. The petitioner admitted that she is residing in the building recorded with the Municipal record as Ex.D4. She also admitted the

correctness of the photographs Ex.D1 to Ex.D3 and that both the electricity meters seen in these photographs were installed in her building. However, from these admissions, it cannot be concluded that she was running the salon shown in the photographs, which she claims to be let out by her to some third person for a brief period. At the same time, though it is the case of the petitioner that the respondent is earning in lakhs, she has failed to adduce sufficient evidence to prove the actual income of the respondent. The building that the respondent originally let to the bank has statedly come to the share of his son and the recipients of the rent are now his son and daughter-in-law as per the statement of witness PW1. This fact becomes more evident from the rent deed dated 06.01.2022 Ex.P2. However, the respondent admits that he still owns about 6 acres of agricultural land reflected in the revenue record Ex.P9 and Ex.P10. Therefore, though there is no proof of the actual income of the respondent, this Court can safely assume the income of the respondent to be Rs.20-25 thousand per month. It is also pertinent that the respondent has reached far advanced age in life than the petitioner. Therefore, in view of all these facts and considering the respective social and financial positions of the parties, this Court is of the view that the ends of justice would be met if the respondent is directed to pay Rs.5,000/- per month to the petitioner towards her maintenance from the date of petition. Ordered accordingly. The respondent is also directed to pay the litigation expenses to the tune of Rs.5,000/-. The petition is accordingly partly allowed.”

7. Section 125 Cr.P.C. is reproduced hereinbelow:-

“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:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation.—For the purposes of this Chapter,—
(a)"minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b)"wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

[(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.]

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing

Explanation.—If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(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.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

8. Perusal of the above stated provision shows that the husband is bound to pay maintenance only to a wife who is unable to support herself. Moreover, as per established legal precepts of law, only supportive maintenance is required to be paid by the husband. In the present case, it is clear that the petitioner has means to support herself in as much as she has admitted that she is residing in the Building (Exhibit D4), a part of which has also been let out by her to a saloon. Supportive maintenance by way of Rs.5,000/- per month has already been granted to her vide the impugned order.

9. In view of the above, I find no merit in the present petition and the same is accordingly, **dismissed**.

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

10.04.2024

Sunena

(Nidhi Gupta)

Judge

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