

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR-F-554-2024(O&M)

Date of order: 22.04.2024

Pinki & Another

.....Petitioner(s)

Vs.

Jitender

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Piyush Aggarwal, Advocate
for the petitioners.

Nidhi Gupta, J.

Prayer in the present petition is for modification of order dated 06.02.2024 passed by learned Principal Judge, Family Court, Jhajjar, whereby in a petition filed under Section 125 Cr.P.C., the petitioners have been granted final maintenance of ₹13,000 per month i.e. respondent/husband has been directed to pay final maintenance of Rs.8,000/- per month to petitioner No.1/wife till she gets re-married; and Rs.5,000/- per month to petitioner No.2/son till the date of his attaining age of majority.

2. Learned counsel for the petitioners inter alia submits that petitioner No.1 was married to the respondent on 06.12.2014. Petitioner No.2 was born out of this wedlock on 23.07.2019, who is currently in the care and custody of petitioner No.1/wife. Due to matrimonial discord the parties have been living separately since 09.11.2019.

3. Thereafter, on 7.7.2021, the petitioners filed the present petition under section 125 Cr.P.C. Learned counsel for the petitioners submits that maintenance as granted vide the impugned order is on the lower side as admittedly, the respondent is earning between Rs.54,000/- to Rs.59,000/- per month. In addition thereto, the respondent also has agricultural income. On the other hand, petitioner No.1 has no source of income and is living at the mercy of her parents. It is submitted that accordingly, the impugned maintenance be enhanced.

4. No other argument is made on behalf of the petitioners.

5. I have heard learned counsel for the petitioners and perused the case file in detail.

6. Perusal of record of the case shows that it has been admitted on record that the petitioner no.1 is able-bodied and is a qualified B.Sc., B.Ed. and JBT. On a direct Court query, as to whether the petitioner no.1 is working, learned counsel for the petitioners has stated that she is not working.

7. As per judgment of the Hon'ble Supreme Court in **"Bhushan Kumar Meen Vs. Mansi Meen Allas Harpreet Kaur (SC) : Law Finder Doc Id # 547724** (in which case too the wife albeit well qualified, was not working), 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.

8. Reliance may also be placed upon judgment of the Karnataka High Court in “**Smt. Shilpashree J. M. Vs. Gurumanjunatha A.S.**”, **2023 SCC OnLine Kar 36**, 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)

9. A perusal of the relevant provision Section 125 Cr.P.C. shows that it is clearly stipulated therein that maintenance is admissible to a wife who is “*unable to maintain herself*”. In the present case, that is not so as, the petitioner no.1 being able-bodied and well qualified, is able to maintain herself. Moreover, it has been held in a plethora of judgments that only supportive maintenance has to be provided by the husband.

10. It may also be noticed that it had been pleaded by the petitioners before the learned Family Court that the respondent was drawing rental income from two floors of his house constructed in Gurugram. The learned Family Court upon appraisal of all the evidence and

pleadings before it had concluded that share of the respondent in the said house was 1/3rd, and the petitioners had led no evidence in support of rent of the said property and had accordingly, taken share of the rental income of the respondent to be between Rs.10,000/- to Rs.12,000/- per month.

11. Furthermore, as per the first affidavit of income, assets and expenditure filed by the respondent/husband, he has admitted that he is B.Tech.; that he is working in a private company and drawing a salary of Rs.37,000/- per month; and that he had inherited 2 kanal and 12 marla of agricultural land from his father. However, subsequently, the respondent had filed a second affidavit of income, expenses and assets (Ex.R5), wherein he had shown himself to be unemployed and his monthly income as NIL as the company had fired him.

12. Accordingly, it was in these circumstances, that the Id. Family Court had “assumed” income of the respondent to be between Rs.54,000/- to Rs.59,000/- per month.

13. In view of the above, I find no ground is made out to interfere in the impugned order. Present petition accordingly stands **dismissed**.

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

22.04.2024

Sunena

(Nidhi Gupta)

Judge

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