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

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**CRM-M No.35151 of 2015
Date of Decision: 06.05.2024**

Gurdip Singh

... Petitioner

Versus

Balwinder Kaur and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. L.M. Gulati, Advocate,
for the petitioner.

MANISHA BATRA, J.

1. The instant petition under Section 482 of Cr.P.C. has been filed seeking quashing of order dated 19.08.2014 (Annexure P-1) passed by learned Sub Divisional Judicial Magistrate, Baba Bakala Sahib whereby an application filed under Section 127 Cr.P.C. for enhancement of maintenance had been allowed and the petitioners therein were directed to be paid an amount of Rs.2000/- per month and Rs.5000/- per month respectively as maintenance as well as order dated 16.07.2015 passed by learned Additional Sessions Judge, Amritsar whereby, a revision petition bearing No.104 of 2015 titled as Gurdip Singh v. Balwinder Kaur and another challenging the order passed by Sub

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Divisional Judicial Magistrate on 19.08.2014, was dismissed.

2. For the purpose of continuity and coherence, the parties shall be referred to hereinafter as per the original nomenclature as given in the petitions filed under Section 125 of Cr.P.C. as well as under Section 127 of Cr.P.C.

3. Brief facts of the case relevant for the purpose of disposal of the present petition are that the petitioner No.1 is ex-wife and petitioner No.2 is son respectively of the respondent. They filed the aforementioned petition under Section 125 of Cr.P.C. against the respondent alleging that he had neglected and refused to maintain them without any reasonable cause. Vide order dated 07.07.2005, the respondent was directed to pay an amount of Rs.500/- per month to petitioner No.1 and Rs.400/- per month to petitioner No.2. Then, the petitioners filed application No.43 of 2010 under Section 127 of Cr.P.C. seeking enhancement in the amount of maintenance so directed to be paid to them on the ground that the amount previously directed to be paid to them was not sufficient for their subsistence due to rise in price index and further due to the fact that the expenses of the petitioner No.2 had increased as he was studying in Class 8th in CBSE affiliated school and more money was required for his fees, stationery and transportation charges, apart from clothing and food etc.

4. The respondent was given notice of the abovesaid petition. He filed reply claiming that the petitioner No.1 was serving as a teacher in Guru Teg Bahadur Model School for Boys at Baba Bakala and was fetching salary of more than Rs.20,000/- per month. She also used to take tuitions and was thereby earning good amount of money. He also took a plea that marriage

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between him and the petitioner No.1 had been dissolved by a decree of divorce passed on 14.09.2004 and he had performed second marriage with one Rakesh Kumari. His second wife and mother were totally dependent upon him. His carry home salary was only about Rs.17,000/- per month whereas the petitioner No.1 was earning about Rs.35,000/- per month and was capable of maintaining herself and, therefore, he was under no liability to make payment of any maintenance to her.

5. It has also come on record that on the pleadings of the parties, the Court of learned Magistrate framed issues. The parties were given opportunity to adduce evidence. The petitioners examined petitioner No.1 as PW-1 who also tendered some documents in evidence whereas the respondent examined himself as RW-1 and summoned another witness RW-2 Jasbir Kaur, teacher of Sri Mata Ganga Model School, Baba Bakala and also relied upon certain documentary evidence. After hearing learned counsel for both the parties and addressing the evidence produced on record, the learned Sub Divisional Judicial Magistrate vide the impugned order dated 19.08.2014, directed the respondent to pay an amount of Rs.2000/- per month to petitioner No.1 and Rs.5000/- per month to petitioner No.2 from the date of filing of the petition. The respondent preferred a revision petition bearing No.104 of 2015 against the said order as discussed above and the learned revisional Court also dismissed the said revision petition. Feeling aggrieved, the present petition has been filed by the respondent.

6. It will not be out of place to mention here that the respondent had withdrawn this petition qua the petitioner No.2-Karanbir Singh and an order was passed by this Court in this regard on 22.12.2015. Meaning

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thereby that the relief as sought by the respondent stands restricted to, as against the petitioner No.1.

7. It is submitted in the petition and it was argued by learned counsel for the respondent that the order dated 19.08.2014 whereby, the maintenance amount as directed to be paid to the petitioner No.1 was enhanced from Rs.500/- to Rs.2000/- is not sustainable in the eyes of law as he had produced sufficient evidence on record to prove that he had remarried and his old aged mother as well as second wife were totally dependent upon him. His mother was suffering from several age related ailments and was under treatment and he had to spend money on her treatment. His carry home salary after the necessary deductions was only Rs.17000/- per month only at the time of passing of the impugned order whereas, the petitioner No.1 was proved to have been working in a school at Baba Bakala and the testimony of RW-2 as well as the admission by the petitioner No.1 as made during her cross-examination proved that she was serving in the above named school. The documents Exs.R-1 and R-2 proved that she was fetching monthly salary @Rs.10,547/- by serving in the above stated school. He argued that the learned trial Court also ignored the fact that petitioner No.1 was fetching income by taking tuitions also. It is further argued that the learned Revisional Court also did not appreciate the evidence produced on record in a proper manner and did not even consider the fact that the petitioner No.1 was proved to be serving in a school and was capable of maintaining herself. With these broad submissions, it is argued that the impugned orders are liable to be set aside, the petition deserves to be accepted and further that he is not liable to pay any amount of maintenance

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to the petitioner No.1 what to say about the enhanced amount of maintenance.

8. It will not be out of place to mention here that though the petitioner No.1 initially appeared in response to the notice of this petition but subsequently none appeared on her behalf.

9. I have heard learned counsel for the petitioner at considerable length and have gone through the record carefully.

10. It is revealed from the record that petitioners have filed petition No.10 of 2002 as against the respondent seeking grant of maintenance under Section 125 of Cr.P.C. and vide order dated 07.07.2005, the petitioner No.1 was directed to be paid maintenance @Rs.500/- per month by the respondent. The petitioner No.1 along with her minor son thereafter filed the petition No.43 of 2010 as on 11.10.2010 seeking enhancement in the amount of maintenance. In the said petition, though the petitioner No.1 did not disclose that she was earning anything but it has also come on record that during cross-examination, it was admitted by her that she was serving in Guru Teg Bahadur school at Baba Bakala and was fetching monthly salary of Rs.6000/- per month. The respondent also summoned RW-2 Jasbir Kaur teacher of the said school who admitted the fact that petitioner No.1 was serving in the above named school since the year 1985 and proved on record Exs.R-1 and R-2 showing that the monthly salary of petitioner No.1 was Rs.10,547/-.

11. The learned Sub Divisional Judicial Magistrate while passing the impugned order dated 19.08.2014 observed that even if the salary of petitioner No.1 was taken into account, still she was entitled to receive

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maintenance minimum @Rs.2000/- per month to bring her financial status at par with that of the respondent. The respondent admitted that his gross income was Rs.41,539/- at that time. The learned Magistrate considered the fact that he was getting deducted more GPF than the minimum prescribed limit and was also paying LIC premium of Rs.3094/- to avoid his liability of making payment of maintenance to the petitioners. Obviously, the deduction of amount more than the minimum prescribed does not fall within the definition of statutory deductions and by getting more amount deducted, the respondent could not claim that his monthly income had been decreased. The testimony of RW-2 and documents Exs.R-1 and R-2, the monthly salary of the petitioner No.1 was proved to be Rs.10,547/- only. The respondent failed to bring any evidence on record to show that petitioner No.1 was fetching any additional income by taking tuitions. Therefore, at the most, the monthly income of petitioner No.1 could be considered to be Rs.10,547/- only at the time when she moved petition seeking enhancement in the amount of maintenance. Section 127 of Cr.P.C. empowers a Court to make any alteration in the allowance of maintenance/interim maintenance on proof of change in the circumstances of any person receiving under Section 125, a monthly allowance for the maintenance.

12. The learned trial Court had increased only an amount of Rs.15,00/- per month in the amount of maintenance which was previously awarded to petitioner No.1. The previous petition was filed in the year 2002 whereas the petition in which the impugned order has been passed was filed in the year 2010 i.e. after a gap of eight years. No doubt, evidence has come on record to show that the petitioner No.1 has also been serving in some

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school and his monthly salary during the pendency of petition was proved to be Rs.10,547/-. However, due to this reason alone, the respondent (present petitioner) cannot be absolved from his liability. The well settled proposition of law is that a wife even divorced is entitled to maintain a standard of living which is at par with the same dignity and status as that of the husband and it is the sacrosanct duty of the husband to provide financial support. No doubt, a careful and just balance has to be drawn between all the relevant factors while assessing the amount of maintenance by determining the financial status of the husband and the standard of living to which the wife and child were accustomed to. The learned Family Court had given increase of only a sum of Rs.1500/- per month in the maintenance to be paid to the petitioner No.1 and from the previous amount of maintenance of Rs.500/-, amount of Rs.2000/- per month had been directed to be paid to her. The amount so enhanced cannot be stated to be extravagant rather the same is bare minimum and the enhancement so allowed cannot be stated to be unjust especially keeping in view the fact that the petitioner No.1 is not maintaining herself but the petitioner No.2 as well and apart from the amount of Rs.5000/- per month which has been directed to be paid to the minor petitioner, she must also have been spending money for meeting with several other reasonable and unforeseen needs of the minor petitioner No.2 who is mostly dependent on her as well of his tuition, extracurricular activities, sports and medicines etc. As such, no illegality or manifest injustice is shown to have been made out on the part of the learned Sub Divisional Judicial Magistrate as well as the revisional Court by passing the impugned orders, therefore, I find no reason to interfere with the same.

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Accordingly, affirming the findings as given by learned Sub Divisional Judicial Magistrate as well as the revisional Court, the present petition is dismissed.

06.05.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No