

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR-F-532-2024(O&M)

Date of order: 19.04.2024

Pawan Kumar

.....Petitioner(s)

Vs.

Smt. Kusum Lata & Another

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Yashveer Kharb, Advocate for
Mr. Vikas Guliya, Advocate
for the petitioner.

Nidhi Gupta, J.

Challenge in the present petition is to order dated 21.02.2024 passed by learned Additional Principal Judge, Family Court, Sonipat, whereby the petitioner/husband has been directed to pay final maintenance of Rs.10,000/- per month to respondent No.1/wife and Rs.4,000/- per month to respondent No.2/ minor son.

2. Learned counsel for the petitioner inter alia submits that the final maintenance as granted to the respondents is on the higher side as respondent No.1 is a well-qualified lady, being B.Ed., B.Com., and M.Com., and is serving as a teacher in a private school at Kharkhoda, from where she is earning Rs.25,000/- per month. She is also running a private tuition centre at home and is earning Rs.15,000/- per month. It is contended that as such, the respondent no.1 is capable of maintaining herself and is therefore not entitled to maintenance. Learned counsel

submits that although these facts were brought to the notice of learned Family Court, however, the same have not been considered in the proper light. It is submitted that accordingly, the impugned order be set aside as respondent No.1 is able to maintain herself.

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 petitioner was married to respondent No.1 on 20.07.2015. One son/respondent No.2 herein was born out of this wedlock on 13.07.2016, who is currently in the care and custody of respondent No.1. Thereafter, due to matrimonial discord, the parties separated. Subsequently, the respondents filed the present petition under Section 125 Cr.P.C. (Annexure P1) on 24.03.2021. A perusal of the said petition (Annexure P1) filed by the respondents shows that it has been alleged therein by the respondents that the petitioner is a BAMS doctor and is running a clinic in Ganaur, District Sonapat, from which he is earning Rs.1 lakh per month. Perusal of reply (Annexure P2) filed by the petitioner to the said petition shows that the petitioner has not denied therein that he is running his own private clinic, although he has denied the income of ₹1,00,000 per month.

6. Be that as it may, the relationship between the parties is admitted. As such, the petitioner cannot absolve himself of his responsibility in maintaining his wife and child. Merely because the wife is

earning does not imply that the petitioner can forgo his moral and legal obligation. Reference judgment of the Hon'ble Supreme Court in **"Chaturbhuji Vs. Sitabhai"** Law Finder Doc ID # 135040, wherein it has been held that merely because the wife is earning something does not imply that she is not entitled to maintenance. Moreover, all that is required under Section 125 Cr.P.C. is that the petitioner has 'sufficient means'. Clearly, this requirement of the provision is satisfied as admittedly, the petitioner is a doctor, and running his own clinic.

7. Furthermore, it is also not denied that the petitioner is an able-bodied person. On the other hand, the respondent No.1 has been found to have serious health issues. Besides that, the respondent No.2/minor son is in the care and custody of the respondent No.1. As such, not only is she solely responsible for his day-to-day well-being, but she also has to provide for his school education and various amenities. In this situation, it is but just and fair that the petitioner at least partially shares the financial responsibility of the upbringing of the minor child.

8. Even further, the Id. Family Court has further found that the petitioner has not come clean about his income. The petitioner had failed to place on record his income tax returns along with his affidavit of assets and liabilities. Clearly, therefore, the petitioner has sought to mislead the court below in respect of his income. Relevant findings of the learned Family Court are as follows:-

"14. As regards the quantum of maintenance, the respondent is admittedly working as a BAMS doctor who is running his own

clinic. Though, he claims that he earns only Rs.25,000/- per month but this plea cannot be accepted. It appears that he is intentionally showing less income so as to avoid the liability to maintain the petitioners. It is pertinent to mention here that respondent has also failed to produce his income tax returns on record along with his affidavit of assets, income and liabilities which would reflect that he is attempting to conceal his actual income. Be that as it may, since the respondent runs his own clinic in village Barhi, Tehsil Ganaur, District Sonipat, his monthly income cannot be assumed as less than Rs.40,000/- per month. On the other hand, documents produced by the petitioner no.1 would reflect that she is having serious health issues. Further, she has to incur multifarious expenses on account of maintenance of minor child. It is also to be kept in mind that the petitioner no.2 is now a school going child and expenses would be required for his education, clothes, transportation, diet etc. On the other hand, it is also to keep in mind that the respondent also has the liability to maintain his old parents. It is to be kept in mind that the maintenance allowance should be neither luxurious nor penurious and it should be reasonable keeping in view the needs of petitioners and the other social and legal responsibilities of the respondent. Therefore, the court is of the view that a sum of Rs.10,000/- per month to the petitioner no.1 and Rs.4,000/- per month to the petitioner no.2 would be an appropriate amount to be granted as monthly maintenance. The court orders accordingly.”

9. Learned counsel for the petitioner is unable to dispute or controvert the above said findings.

10. In view of the above, I find the impugned order to be just and fair in the facts and circumstances of the present case. Present petition accordingly stands **dismissed**.

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

19.04.2024

Sunena

(Nidhi Gupta)

Judge

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