

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR-F-628-2024 (O&M)
Date of order: 02.05.2024

Monika & Others

.....Petitioner(s)

Vs.

Ajay Kumar

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Kulwant Singh Dhanora, Advocate
for the petitioners.

Nidhi Gupta, J.

Prayer in the present petition is for modification of order dated 19.02.2024 passed by learned Additional Principal Judge, Family Court, Yamuna Nagar at Jagadhri, whereby in a petition under Section 125 Cr.P.C., petitioner No.1/wife has not been granted any maintenance; and petitioners No.2 and 3 (minor sons) have been granted final maintenance of Rs.2,500/- each per month till they attain majority.

2. It is inter alia submitted by learned counsel for the petitioners that petitioner No.1 was married to the respondent on 14.01.2011. Two sons i.e. petitioners No.2 and 3 were born out of this wedlock, who are in the care and custody of petitioner No.1. It is submitted that due to matrimonial discord, the parties are living separately since 05.06.2018. Learned counsel states that the impugned maintenance granted to petitioners No.2 and 3 deserves to be enhanced as the respondent is running a Chemist Shop and doing the work of mobile recharge, from where he is earning about Rs.50,000/- per month. It is

stated that in view of the above fact, the maintenance of only Rs.2,500/- each per month granted to petitioners No.2 and 3 is on the lower side. It is further vehemently submitted that nothing has been granted by way of maintenance to the petitioner/wife. It is submitted that it is the moral and legal responsibility of the respondent to maintain his wife, especially in view of the fact that she has no source of income. It is accordingly prayed that the impugned order be modified to the extent that enhanced maintenance be granted to petitioners No. 2 and 3; and be set aside to the extent that nothing has been granted as maintenance to petitioner No.1/wife.

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

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

5. Perusal of record of the case shows that petitioner No.1 and the respondent had filed a petition under Section 13-B of the Hindu Marriage Act, 1955, seeking divorce by mutual consent, in which petitioner No.1 had received an amount of Rs.4 lakh out of total settlement amount of ₹7 lakhs as part payment towards settlement of all disputes between the parties. However, by way of statement dated 29.07.2021 petitioner No.1 withdrew her consent for divorce and also did not return the amount of Rs.4 lakh which she had received from the respondent.

6. It has also come on record that the respondent and his father had bought a plot which was transferred in the name of petitioner No.1 vide deed dated 18.02.2014. As per the terms of settlement, the petitioner No.1 was to transfer the said plot back to the respondent.

However, petitioner No.1 failed to transfer the plot which was purchased by the respondent and his father in her name.

7. It has also been noticed in the impugned order that petitioner No.1 had registered several complaints and an FIR against the respondent, in which a compromise was effected between the parties, which were to be withdrawn by the petitioner no.1, which was also subsequently resiled from by petitioner No.1.

8. Relevant findings of the learned Family Court are contained in para 19 of the impugned judgment which reads as follows: –

“19. Present petition has been instituted on 07.01.2019. Compromise dated 02.06.2019 and affidavits executed on 03.06.2019 were after institution of present petition. After compromise, both parties instituted petition for mutual divorce on 09.10.2019. On the same day their statement at first motion was also recorded. Now as per this statement, Monika/petitioner was to withdraw her petition under Section 125 Cr.P.C., which was instituted on 07.01.2019 and the criminal litigation under Sections 323, 354, 498-A and 506 IPC registered against respondent and his family members. It is clear from the statement at first motion that Monika did not withdraw her any litigation on the date of her statement at first motion. Also as per first motion statement, Monika was to transfer the plot bearing registered sale deed No. 3723, dated 18.02.2014 on or before second motion statement. Ajay Kumar was to bear all transfer expenses with regard to that plot. But at the time of recording second motion statement on 29.07.2021, Monika withdrew her consent. Her statement for withdrawal of consent was recorded separately. Learned Principal Judge, Family Court on the same date directed Monika to return the amount/benefit received by her from

petitioner No. 2 (Ajay Kumar) for herself and for minor children at the time of statement at first motion at the earliest preferably within 15 days from date of order. This order was made by learned Family court on 29.07.2021. Monika tendered her sworn testimony Ex. PW1/A on 03.06.2022 before the court and in para 6, she testified that out of Rs. 7 lakh, she has obtained Rs. 4 lakh in the name of her children.”

9. Learned Family Court also noticed that on the one hand, petitioner No.1 was denying her signatures on the settlement arrived at between the parties and on the other hand, had simultaneously accepted the money arising out of that settlement while resiling from her part of the agreement.

10. Learned Family Court further found that exaggerated version had been presented by petitioner No.1 and the witnesses produced by her in support of her contentions, which included her father Som Nath as PW2.

11. The Id. Family Court further found that the petitioner no.1 had deserted the matrimonial home on her own will and she had also taken both the children along with her. At one stage, the respondent had also filed a petition under section 9 HMA, but to no avail. It was accordingly held that in not adhering to the terms of the settlement, and for also deserting the matrimonial home for no reasonable cause, the petitioner no.1 had committed cruelty upon the respondent and therefore, as per Section 125(4) Cr.P.C she was not entitled for maintenance.

12. A finding was also returned by the learned Family Court that the petitioners had failed to produce anything to show that the

respondent was running a medical store and was earning Rs.50,000/- per month. On the other hand, the respondent had filed his affidavit of assets and liabilities, wherein he had mentioned that he was doing labour work and earning Rs.5,000/- from that avocation.

13. It has also come on record that father of petitioner No.1 owned agricultural land at village Khera. It was also pleaded by the respondent before the learned Family Court that petitioner No.1 is well qualified and doing the work of stitching and sewing. Petitioner No.1 in her cross-examination recorded on 23.10.2023 has admitted that she knows stitching and embroidery work and she is doing the work of stitching and embroidery.

14. Ld. Counsel for the petitioners has not controverted the above said findings.

15. In view of the above, I find no ground is made out to interfere in the detailed and well reasoned order. Present petition is accordingly, **dismissed**.

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

02.05.2024
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No