

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-7274-2017(O&M)

Date of order: 02.05.2024

Anand Parkash Gulia

.....Petitioner(s)

Vs.

Neema Gulia

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Saurabh Dalal, Advocate with
Mr.Gurasis Singh, Advocate
for the petitioner.

Mr. S.P. Chahar, Advocate
for the respondent.

Nidhi Gupta, J.

Present petition under Section 482 Cr.P.C. has been filed by the petitioner/husband seeking quashing of impugned order dated 24.10.2016 passed in Revision Petition by Additional Sessions Judge, Sessions Court, Jhajjar; and order dated 07.08.2015 (Annexure P1) passed by learned Judicial Magistrate, 1st Class, Jhajjar, whereby petition under Section 125 Cr.P.C. has been allowed in favour of the respondent/ wife.

2. Learned counsel for the petitioner/husband inter alia submits that the petitioner was married to the respondent on 21.11.1996. Out of this wedlock, two children were born, who have always been in the care and custody of the petitioner. It is submitted that the petitioner was serving as a Sergeant Flight Gunner in Indian Air Force and drawing a salary of Rs.21,000/- per month. Due to his service, he was posted at various

places all over India, which led to matrimonial discord between the parties. Subsequently, because of harassment caused by the respondent due to numerous Court cases filed by her against the petitioner, the petitioner sought voluntary retirement, upon which he was granted a pension of Rs.10,500/- per month. The parties started living separately since December, 2007 and since 03.05.2008, both the minor children have been living with the petitioner and his parents.

3. Subsequently, on 02.11.2009/21.02.2015, the respondent filed a petition under Section 125 Cr.P.C. whereby, vide impugned order dated 07.08.2015 passed by learned Judicial Magistrate, 1st Class, Jhajjar, the petitioner was directed to pay Rs.4,000/- per month to the respondent as final maintenance from the date of filing the petition; and Rs.3,000/- as litigation expenses. The said order was challenged by the petitioner before the learned Additional Sessions Judge, Sessions Court, Jhajjar, by way of Criminal Revision Petition No.52 of 2015. However, vide order dated 24.10.2016, the said Revision Petition was disposed of without according any relief to the petitioner. Ld. counsel for the petitioner contends that the impugned order deserves to be set aside on account of the fact that the petitioner is already paying a sum of Rs.3,000/- per month to the respondent as maintenance granted to her under the Domestic Violence Act.

4. Learned counsel further submits that the petitioner has single-handedly taken care of both the children who have been in his custody since 03.05.2008. He has provided for them not just financially but has taken care of their entire education and upbringing. The respondent

never filed any petition under the Guardians and Wards Act for custody of the child nor did she provide any financial aid towards their upkeep.

5. Learned counsel further states that the Courts below have also failed to take into consideration that, in addition to his two minor children, the petitioner also has the additional responsibility of his aged and ailing parents. The petitioner is a retired soldier and has given all his savings to the respondent, whereas the respondent has run away from her duty as a mother, wife, and daughter-in-law.

6. Learned counsel points out that it has been admitted on record that the respondent is working as a Primary Teacher at PDM School, Bahadurgarh; and was receiving a salary of Rs.16,507/- in September, 2013, which must have increased manifold by now. It is submitted that the respondent has no additional responsibilities and is staying with her parents and is therefore, not entitled to any maintenance; but as pointed out hereinabove, the petitioner has numerous other responsibilities as well.

7. It is further submitted that, on 30.11.2006, the petitioner had purchased a plot measuring approximately 2420 square yard in Coimbatore in the name of the respondent vide Registered Sale Deed dated 30.11.2006. In buying the said plot, the petitioner had given up his entire service savings to enable her to stand on her own legs, whereafter she deserted the matrimonial home as also the children. It is accordingly, prayed that the present petition be allowed and the impugned order be set aside.

8. Per contra, learned counsel for respondent/wife opposes the prayer made on behalf of the petitioner and submits that, no doubt, the respondent is working as a Teacher in a private school. However, the minor children of the parties have always resided with their paternal grandparents. In order to render financial assistance for the minor children, the paternal grandparents/father of the petitioner had filed a petition under Section 125 Cr.P.C. against the petitioner and the respondent, titled as “Tijil Vs. Neema”, in which both, the petitioner and the respondent were directed to pay Rs.2,000/- each as maintenance to the children.

9. It is further submitted that the petitioner has incorrectly stated that he was drawing a pension of only Rs.10,500/- per month. Learned counsel points out that in fact, it has been found by learned Judicial Magistrate, 1st Class, that the petitioner was getting a salary of Rs.36,000/- per month from Bank of Baroda and approximately Rs.16,000/- as pension. It is also submitted that the petitioner is in arrears of maintenance.

10. Learned counsel for the petitioner counters the above said submission made by learned counsel for the respondent by stating that learned Courts below have incorrectly held that the petitioner is earning Rs.52,000/- per month merely on the oral and bald statement made by the respondent and that there is no proof on record in respect of the same.

11. In respect of the plot alleged to have been purchased by the petitioner in the name of the respondent, it is clarified by learned

counsel for the respondent that in purchase of the said plot, money was paid by father of the respondent.

12. No other argument is made on behalf of the parties.

13. I have heard learned counsel for the parties and perused the case file in detail.

14. Perusal of record of the case shows that the undisputed facts on record are that relationship between the parties is not denied; it is not denied that both the parties are able bodied; admittedly, the respondent is a working woman; in a petition filed by paternal grandparents of the children, both the parties are paying Rs.2,000/- each per month for the upbringing of the children. It is also admitted that both the children have now attained majority. The contention on part of the respondent that father of the respondent had paid for the plot bought in her name at Coimbatore, has not been countered by learned counsel for the petitioner.

15. The only point of dispute between the parties is the income of the petitioner. It is the petitioner's case that at the relevant time in 2013, he was drawing a pension of Rs.10,500/- per month only; whereas the respondent was earning more than him and getting a salary of approximately Rs.16,000/- per month. However, both the Courts below have returned the finding that income of the petitioner was Rs.52,000/- per month. Although, it has been contended by learned counsel for the petitioner that the said finding was returned only on the basis of oral statement of the respondent, yet, there is no evidence on record to

discredit the said findings of both the courts below. It is admitted that the petitioner has not placed on record his passbook or his bank statements or any other evidence to counter or dispute the said finding. It has also come on record that the amount of Rs.3,000/- per month to be paid by the petitioner under the DV Act is to be set off against Rs.4,000/- per month, which is to be paid by the petitioner in the present proceeding under Section 125 Cr.P.C.

16. In view of the above, present petition is **dismissed**.
17. Pending application(s) if any also stand(s) disposed of.

02.05.2024	(Nidhi Gupta)
Sunena	Judge
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No