



CRR(F)-155-2017

1

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

**CRR(F)-155-2017
Date of decision: 04.10.2024**

SAVITRI DEVI ... PETITIONER

V/s

SITA RAM ...RESPONDENT

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Nitin Jain, Advocate for the petitioner.

None for the respondent.

SUMEET GOEL, J.

1. Present criminal revision petition is filed against the order dated 20.01.2017 passed by the Learned Family Court, Hisar, in a case bearing No. MNT 357-III of 2016, whereby an application filed by the petitioner-herein (wife) under Section 127 of the Cr.P.C. was allowed. In the present petition, it is contended that the amount of maintenance as enhanced by the Family Court in favour of the petitioner, vide the impugned order, is inadequate and is entitled to be enhanced.
2. Facts germane to the adjudication of the present petition are that initially the petitioner filed a petition against the respondent for grant of maintenance on the ground of her being his legally wedded wife and not possessing sufficient means to maintain herself. The said petition was allowed by the Court of Additional Chief Judicial Magistrate, Hisar vide order dated

**CRR(F)-155-2017**

2

06.03.1996 and an amount of Rs.500/- per month was awarded to the petitioner as maintenance. Thereafter, the petitioner is stated to have filed an application under Section 127 of the Cr.P.C., seeking enhancement of the maintenance amount so granted, whereby the maintenance amount of Rs.500/- per month, as originally granted to the petitioner, was enhanced to Rs.900/- per month vide order dated 11.07.2009.

2.1 Thereafter, with the passage of time, feeling dissatisfied with the quantum of maintenance prevailing in her favour, the petitioner again filed an application on 02.05.2014, under Section 127 of the Cr.P.C., for enhancement of quantum of maintenance granted in her favour. The said application was decided by the learned Family Court vide impugned order dated 20.01.2017 and the quantum of maintenance was enhanced from Rs.900/- per month to Rs.3000/- per month.

3. Learned counsel for the petitioner has contended that the maintenance amount of Rs.3000/- per month, so enhanced by the learned Family Court, vide the impugned order, is inadequate and is liable to be enhanced in view of the increased earnings of the respondent including the retiral benefits which he got on his retirement from the Fire Department. It has been further contended that though the respondent retired from his service from Fire Department on 30.11.2015, his last drawn salary was Rs.44,106/-.

It is contended that the commuted value of pension of the



CRR(F)-155-2017

3

respondent is Rs.3,64,798/-; and besides that, he has received a Gratuity of Rs.6,16,435/-; and leave encashment of Rs.3,97,700/-. It has been further submitted that the respondent also owns some immovable property, hence the learned Family Court must have taken this fact into consideration while adjudicating upon the application for enhancement of the maintenance amount. It has been prayed on behalf of the petitioner that in light of the above-mentioned facts, the petitioner is entitled to receive maintenance amount to the tune of Rs.20,000/- per month from the respondent.

4. It is pertinent to mention herein that the respondent was duly served in this present revision petition but has chosen not to appear.

5. I have heard the learned counsel for the petitioner and have gone through the case record carefully.

6. A perusal of the record shows that in his reply filed to the application under Section 127 of the Cr.P.C., the respondent-herein has contended that the petitioner possess ample source of earning and is not liable to claim maintenance from the respondent. It has been further alleged by the respondent in his above said reply that the respondent, besides paying maintenance to the petitioner also has certain other liabilities including the maintenance amount which he was obliged to pay to his daughter who has since got married. Furthermore, the respondent has old aged parents and his mother was suffering from a neurological problem, which add to



CRR(F)-155-2017

4

his liabilities. The fact that the respondent's brother has expired and the respondent is obligated to look after deceased brother's wife and children also, should also be taken into account while fastening him with the liability to maintain the petitioner.

7. Perusal of the order dated 01.09.2015 passed by the Family Court, shows that the Family Court ordered to take evidence of the parties by way of their respective evidence only supported by the documents annexed alongwith, in pursuance of provisions of Section 10(3) of the Family Courts Act, 1984. This order passed by the Family Court was never challenged/agitated by any of the parties and the parties by acting in compliance with said order, are now deemed to have waived their right to cross-examine the witnesses.

8. It is an admitted fact that the respondent stands retired as a fireman w.e.f. 30.11.2015. After retirement, he has been drawing a monthly pension of Rs.9080/- only. Accordingly, the learned Family Court, while taking into account the said pension amount, granted 1/3rd of the pension drawn by the respondent, as maintenance to the petitioner by enhancing the maintenance amount from Rs.900/- (already being received by her) to Rs.3000/-. The said enhanced maintenance was ordered to be paid to the petitioner from the date of filing of the application by her under Section 127 of the Cr.P.C., i.e. from 02.05.2014.



CRR(F)-155-2017

5

9. The scope of revisional jurisdiction is limited, the same is to be exercised where there is a palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily.

10. In my considered opinion, the impugned order passed by the learned Family Court, is not erroneous and does not suffer from any legal vice. The petitioner was initially awarded the maintenance on 06.03.1996, which was further enhanced on the application of the petitioner vide order dated 11.07.2009. The petitioner continued to receive the said amount awarded by the competent Courts without any challenge/agitation till 02.05.2014 i.e., when the application under Section 127 of Cr.P.C., which is the subject matter of this present criminal revision petition, was filed by her. The petitioner having acquiescing to the amount so awarded in her favour prior to 02.05.2014, cannot now be permitted to turn around and assert that the amount so awarded was inadequate.

11. The argument on behalf of the petitioner that the maintenance amount has to be fixed in accordance and in proportion to the retiral benefits received by the respondent, is wholly fallacious. The retiral benefits received by the respondent in the shape of commuted pension, leave encashment, gratuity, etc., being part and parcel of his earnings during the period, for which he was paying the maintenance as awarded by the competent

**CRR(F)-155-2017**

6

Courts in favour of the petitioner, cannot be construed as a separate source of earning, after his retirement. The petitioner, by way of an application under Section 127 of the Cr.P.C., cannot be allowed to seek partition of the retiral benefits received by the respondent after his retirement. This fact holds more significance in view of the evidence of the respondent that besides paying maintenance to the petitioner, he had been paying maintenance to his daughter also till she got married.

12. Considering the present earning of the respondent in the shape of his pension to the tune of Rs.9080/- per month, in tandem with his liabilities, as stated by him in his affidavit of evidence, i.e. his own personal expenses, the liability to maintain his old aged parents, especially the mother suffering from a neurological ailment, and the wife as also two children of his deceased brother, the learned Family Court has correctly restricted the enhancement of maintenance in favour of the petitioner to the extent of $\frac{1}{3}^{\text{rd}}$ of the total pension of the respondent. Thus, the maintenance amount so enhanced by the learned Family Court, cannot be said to be inadequate/insufficient in the facts and circumstances of the present case having been awarded to the petitioner as maintenance in my considered opinion cannot be termed as inadequate in the facts of the present case.

13. An argument has been raised on behalf of the petitioner that the respondent has falsely deposed in his affidavit



CRR(F)-155-2017

7

that he is maintaining the wife of his brother, whereas, she is the second wife of the respondent himself. Be that as it may, this argument being beyond the pleading and evidence led by the petitioner is not sustainable and is liable to be rejected. The deposition of the respondent in this regard has gone un rebutted on the part of the petitioner; as such she cannot be permitted to raise this argument.

14. Reliance has been placed on behalf of the petitioner on the judgment titled as *Shamima Farooqui vs Shahid Khan, 2015(2) RCR Civil 628*, to contend that the maintenance amount cannot be reduced after the retirement of the respondent. In the said judgment the Hon'ble Supreme Court held that the maintenance amount awarded to the wife during the husband's service period cannot be reduced after his retirement, as the husband gets a number of retiral benefits also. The ratio of law laid down by the Hon'ble Supreme Court in said judgment is entirely on different footing than the facts of the present case. In the present case, vide the impugned order, the learned Family Court has not reduced the maintenance amount, so awarded to the petitioner, rather has increased it manifolds after the retirement of the respondent. As such the judgment in the case of *Shamima Farooqui* (supra) is of no aid to the case of the petitioner and the reliance thereupon on behalf of the petitioner is misplaced.

CRR(F)-155-2017

15. In view of the above-said discussions the impugned order dated 20.01.2017 passed by the Family Court, Hisar is upheld and the present criminal revision petition is dismissed.

(SUMEET GOEL)
JUDGE

October 04, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No