

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

221

Date of order: 04.04.2024

CRR-638-2018(O&M)

Jyoti Devi

.....Petitioner(s)

Vs.

Deepak & Others

.....Respondent(s)

CRM-M-7786-2018(O&M)

Jyoti Devi

.....Petitioner(s)

Vs.

Deepak

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. P.R. Yadav, Advocate
for the petitioner.

Mr. Mahipal S. Yadav, Advocate
for the respondents.

Nidhi Gupta, J.

CRM-5993-2018 IN CRR-638-2018

This is an application under Section 482 Cr.P.C. for exemption from filing certified copies of impugned order dated 02.12.2017, Annexure P1 to P3 and typed copies of impugned order dated 02.12.2017, grounds of appeal dated 07.06.2017, copy of order dated 12.05.2017 and

Annexure P3 and permission to place on record photocopies of the same in place of typed copies in double space.

After going through the contents of the application, which is supported by affidavit of the petitioner, the same is allowed subject to all just exceptions.

CRM-6705-2018 IN CRM-M-7786-2018

This is an application under Section 482 Cr.P.C. for exemption from filing certified copies of Annexures P1, P5 and P6 and typed copies of Annexures P3 and P4 and permission to place on record photocopies of the same in place of typed copies in double space.

After going through the contents of the application, which is supported by affidavit of the petitioner, the same is allowed subject to all just exceptions.

CRR-638-2018

Challenge in the present petition is to order dated 02.12.2017 passed by the learned Additional Sessions Judge, Rewari in CRA-197-2017 filed by respondent No.1/husband, whereby he had challenged order dated 12.05.2017 passed by learned SDJM, Kosli vide which the petitioner/wife had been granted maintenance of Rs.5,000/- per month along with Rs.1,500/- per month as house rent in a petition filed by the petitioner under Section 12 of the DV Act.

CRM-M-7786-2018

Challenge in the present petition is to order dated 02.12.2017 (Annexure P4) passed by learned Additional Sessions Judge, Rewari in CRR-196-2017 filed by respondent No.1/husband whereby he had challenged order dated 12.05.2017 (Annexure P2) passed by learned SDJM, Kosli granting Rs.5,000/- to the petitioner as maintenance in a petition filed by the petitioner under Section 125 CR.P.C. The said maintenance of Rs.5,000/- per month granted under Section 125 Cr.P.C. merged with Rs.5,000/- per month granted to the petitioner under the DV Act. However, vide the impugned order dated 02.12.2017, the learned Additional Sessions Judge has reduced the said maintenance of Rs.5,000/- to Rs.3,500/- per month.

2. Both the present petitions are being disposed of by this common order as facts, circumstances, issues, and parties in both the petitions are identical. For the sake of convenience, the facts are being taken and parties are being referred to as per their status in CRR-638-2018.

3. Learned counsel for the petitioner/wife submits that the petitioner was married to the respondent no.1 on 06.05.2000. Two children were born out of this wedlock, who have both now attained majority. As per the petitioner she was turned out of the matrimonial home by the respondents, and she has been residing at the mercy of her parents since 20.05.2013. The petitioner had no means to support herself. As such, on 22.08.2014, the petitioner filed one petition under Section 125 Cr.P.C.

(Annexure P1 in CRM-M-7786-2018) before the learned SDJM, Kosli for

grant of maintenance. Simultaneously, on 22.08.2014 itself, the petitioner also filed an application under Section 12 of the DV Act (Annexure P3 in CRR-638-2018) before the SDJM, Kosli.

4. Learned counsel submits that vide order dated 12.05.2017 (Annexure P2 in CRM-M-7786-2018), learned SDJM, Kosli granted Rs.5,000/- to the petitioner as maintenance under Section 125 Cr.P.C.; and vide order of even date i.e. 12.05.2017 passed in petition under Section 12 of the DV Act bearing No.COMA/10/2014, learned SDJM, Kosli granted Rs.5,000/- per month to the petitioner as maintenance along with Rs.1,500/- as house rent allowance as monthly rent to be paid by the respondent to the petitioner in lieu of residence. The order dated 12.05.2017 passed by learned SDJM, Kosli in petition under Section 125 Cr.P.C. was challenged by the respondent by way of CRR-196-2017. Whereas order dated 12.05.2017 passed by learned SDJM, Kosli in petition under Section 12 of the DV Act was challenged by the respondent by way of CRA-197-2017. Vide common order dated 02.12.2017 passed by learned Additional Sessions Judge, Rewari, the revision petition and appeal filed by the respondent were partly allowed, and maintenance awarded to the petitioner was reduced from Rs.5,000/- to Rs.3,500/- per month, however, the amount of Rs.1,500/- awarded as monthly rent was maintained, while directing as under:-

“11. In view of foregoing discussion, the appeal and revision filed by the husband are partly accepted in the manner described below. The impugned order/judgment are to be treated modified accordingly.

A. The husband will be liable to pay Rs.3500/- per month under section 20 of DV Act, 2005, and Rs.1500/- under section 19 of DV Act, 2005, from the date of petition i.e. 22.08.2014, till wife is legally entitled to get the same. However, there would not be any change in protection order passed by learned trial court.

B. The wife will be entitled to get Rs.5000/- per month under section 125 Cr.P.C. from the date of judgment dated 12.05.2017, onwards, as per law, only if she forgo her right to get relief provided by this court in appeal under section 29 of DV Act, 2005, of the husband w.e.f. 12.05.2017.

C. If any interim maintenance has been received by the wife between 22.08.2014 till 12.05.2017 either under section 27 of DV Act, 2005, or, under section 125 (1) (d) Cr.P.C., the said amount shall be deducted from the amount ordered to be payable.

D. The amount of maintenance paid by husband during pendency of the appeal under section 29 of DV Act, 2005, to the wife in compliance of order dated 17.07.2017, of this court, shall be adjusted against the amount payable to the wife and if some extra amount has been paid, it would legally be adjusted against the amount due to wife in future.”

5. Learned counsel for the petitioner vehemently submits that in passing the impugned order as above, learned Additional Sessions Judge has lost sight of the fact that the petitioner is residing with her parents since 20.05.2013. She is living at their mercy and goodwill. As per law, it is the duty of the husband to maintain the wife. The amount of Rs.3,500/- is very meager for the petitioner to maintain herself. It is submitted that the respondent has admitted in his cross-examination that he is a Post-Graduate and used to work as Executive in Sahara Mall in

Gurgaon. It is contended that in order to avoid paying maintenance, the petitioner had falsely deposed that he had left his job and was sustaining himself and the children by taking loan from his parents. Further, it is the admitted case of the respondent that his father is getting two pensions, one from the Army and one from the Haryana Government, and mother of the respondent is also getting Senior Citizen pension. In view of these facts, the maintenance as awarded to the petitioner deserves to be enhanced.

6. It is further submitted that since 20.05.2013, the petitioner has not been allowed to meet her children except once before the learned trial Court. Even no visiting rights have been given to the petitioner to meet her children. On the contrary, the respondent has created hatred in the minds of the children against the petitioner. It is argued that both the Courts below failed to pass any order regarding visitation rights of the petitioner. Being the mother, the petitioner is entitled to meet her children and also entitled to share accommodation so that she can keep watch on her children. Accordingly, the impugned order be set aside/modified and suitable maintenance be ordered to be given to the petitioner.

7. Per contra, learned counsel for the respondent/husband submits that the petitioner is lady of quarrelsome nature who used to quarrel unnecessarily, harassed the respondent and his family members, and that she had even tried to commit suicide. It is contended that the petitioner is skilled in stitching and embroidery work and also works as a beautician, and is therefore, able to maintain herself. It is further submitted

that children of the parties are in the sole care and custody of the respondent. Learned counsel admits that the petitioner has not seen the children since 2013. It is further submitted that in January, 2015 the respondent had also filed a petition under Section 9 of the Hindu Marriage Act, 1955, wherein the matter was compromised in mediation and the respondent no.1 accordingly, withdrew the said petition. However, as the petitioner failed to come back to the matrimonial home, the respondent had then filed a petition under Section 13 of the Hindu Marriage Act, which is pending. It is submitted that it has been incorrectly alleged that the respondent owns any land. On the contrary, the respondent is unable to work due to ill health and has undergone coronary angioplasty and has taken loan from his father to maintain his children. It is further submitted that the petitioner has failed to produce any medical evidence on record in support of her allegations that she was beaten up by the respondent and his family. It is also submitted that son of the parties is 19 years old and is still studying.

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

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

10. Respondent no.1 is the husband; respondent no. 2 is the father-in-law; Respondent no.3 is the mother-in-law; Respondents no.4,5, and 6 are the sisters-in-law/nanad of the petitioner.

11. The main plank of argument on behalf of the petitioner for setting aside the impugned order is that the respondent no.1 is gainfully employed as Manager in the Sahara Mall from where he is drawing a salary of Rs.50,000/- per month. However, no proof or evidence whatsoever has been brought on record either before the Id. Courts below, or even before this Court to show that the respondent was working as a Manager in Sahara Mall or that he has any income. The Id. SDJM in his order dated 12.5.2017 has returned a categorical finding that there is no proof that the respondent was working as a Manager in Sahara Mall. On the contrary, it is established on record that the respondent has a heart ailment. In this regard, the respondent no.1 had placed on record medical evidence to show that he had a heart problem and had undergone coronary angioplasty on 15.6.2016. Thus, there is no reason made out to doubt the contention on part of the respondent no.1 that he is unable to work due to his ill-health.

12. It is further admitted on record that both the children born out of the wedlock of the petitioner and respondent no.1, have been in the sole care and custody of the respondent no.1. Admittedly, the respondent no.1 has single-handedly borne the educational expenses as well as made provision for the day-to-day amenities and requirements of the children. It has been admitted that the petitioner has made no contribution towards the upbringing of the children. As regards her contention, that she has not been allowed to meet the children, I find no merit in the same as learned counsel for the petitioner has admitted that the petitioner had not, at any stage, filed any petition seeking custody of

the children. At the time of passing the impugned order the children were studying in Class 10 and Class 8. The younger child/ son aged 19 years is still studying, and in the near future, the respondent no.1 will also have to make provision for the marriage of his daughter. It has also been found on record that as the respondent no.1 was unemployed, he had taken loan from his father/respondent no.2 for the upkeep of his family. Thus, undisputedly, till date the respondent no.1 has single-handedly maintained his children. It may also be noted that in para 8 of the order dated 12.5.2017 passed by the learned SDJM, it has been recorded that *“As far as orders for share household are concerned, during course of the trial children of the parties were asked where do they want to live. They pointed that they are not inclined to live with their mother. Said children are not that young to not understand good or bad for them.”* It was in this view of the matter that the petitioner had been granted maintenance and house rent allowance as above.

13. Moreover, learned counsel for the petitioner has admitted that the petitioner is an able-bodied lady. He has however, stated vehemently that the petitioner belongs to such a family that she cannot go out and work. Ld. counsel has also stated that the petitioner is suffering from stomach problem however, no details were provided regarding the same let alone any medical proof. Be that as it may, it is established fact on record that unlike respondent no.1, the petitioner has no responsibilities and liabilities, and she is staying with her parents. Whereas the respondent no.1 besides his own ill health, has the responsibility of maintaining his

children, and though parents of respondent no.1 may not be financially dependent on him, it is admitted that they are aged and are staying with him, and the respondent no.1 looks after them also. It was also proven on record that the petitioner had failed to bring any medical proof regarding any beatings given to her by the respondent and his family. Admittedly, even no police complaint or any application in the Women Cell was filed by the petitioner in regard to the alleged beatings suffered by her.

14. It is also established on record that the respondent no.1 had filed a petition under Section 9 of the Hindu Marriage Act, which was compromised during mediation. Despite that the petitioner had continued to stay separately without any cause and had not joined the company of the respondent no.1 whereupon, the respondent no.1 withdrew the said petition. In fact, therefore, the petitioner is not entitled to any maintenance under the provision of Section 125 (4) Cr.P.C. which stipulates as follows:

“(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.”

(Emphasis mine)

15. Further perusal of record of the case shows that it was admitted on part of the petitioner before the learned Courts below that parents of the respondent no.1 are senior citizens and father of the respondent no.1/who is respondent no.2 herein, maintained ill health.

16. It was in view of the above facts that the learned Additional Sessions Judge had taken the respondent to be labourer and had assessed his income as per DC rate and keeping in view the totality of facts and circumstances of the case, such as ill-health of the respondent himself; as also his own medical requirements; the fact that both the children were in the care and custody of the respondent no.1; ill-health of respondent no.2; had reduced the amount of maintenance from Rs.5,000/- to Rs.3,500/- per month along with Rs.1,500/- under Section 19 of the DV Act. Nothing has been shown to this Court that warrants the interference in the impugned order. Relevant findings of learned Additional Sessions Judge, Rewari in this regard in the impugned order dated 2.12.2017 are as under:-

“9...Before commenting further, it is worth to note here that petitions under section 12 of DV Act, 2005 and under section 125 Cr.P.C. were filed by the wife-respondent, on the same day i.e. 22.08.2014, and these were decided by same court on dated 12.05.2017, in the manner described above. It is also matter of record that the wife despite having claimed income of her husband of Rs.50,000/- per month from his service as Manager in Sahara Mall at Gurugram, has failed to lead any evidence to show what exactly is the income/salary of the husband? It is also a matter of record that since the year 2013, wife has been staying separately from her husband and the children and also that her daughter is presently studying in 10th class and son in 8th class who are looked after by her husband at her matrimonial home. It is also matter of record that the husband has undergone angiography and is presently taking treatment for the same and that his parents are also staying with him. It is also matter of record that the husband has also not been able to show that the wife is financially

competent to manage on her own. The pendency of divorce petition filed by husband before learned court of Additional District Judge, at Rewari. It is also matter of record that in the petition filed under section 9 of Hindu Marriage Act by the husband, wife did not join in his company, so, he withdrew the same.”

17. Accordingly, in view of the discussion above, I find no merit in the present petitions and the same are accordingly, **dismissed**.

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

04.04.2024		(Nidhi Gupta)
Sunena		Judge
Whether speaking/reasoned	Yes/No	
Whether reportable	Yes/No	