

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

211

CRR-F-366-2018(O&M)

Date of order: 05.04.2024

Smt. Sunita

.....Petitioner(s)

Vs.

Parteek

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.V.P. Sangwan, Advocate
for the petitioner.

Nidhi Gupta, J.

Prayer in the present petition is for setting aside order dated 07.05.2018 passed by learned District Judge, Family Court, Bhiwani, whereby application of the respondent filed under Section 127 Cr.P.C. has been allowed and the petitioner has been directed to pay enhanced maintenance of Rs.4,000/- to the respondent.

2. Learned counsel for the petitioner inter alia submits that the petitioner is the mother of the minor respondent herein. She was married to father of the respondent on 19.02.2007. Due to matrimonial differences, the petitioner and her husband separated. Subsequently, the petitioner filed a petition dated 30.07.2013 under Section 13 of the Hindu Marriage Act, 1955 wherein divorce was granted vide decree dated 17.10.2015 passed by learned District Judge, Family Court, Bhiwani (Annexure P2).

3. It is submitted that thereafter, the respondent through his Guardian/paternal grandfather filed a petition under Section 125 Cr.P.C.

seeking maintenance from the petitioner (respondent no.2 therein), as well as his father (respondent no.1 therein). The said petition was allowed by the learned District Judge, Family Court Bhiwani vide order dated 15.04.2013 (Annexure P1), wherein the petitioner was directed to pay Rs.1,000/- per month to the respondent by way of maintenance allowance and father of the respondent was directed to pay Rs.2,000/- per month.

4. Thereafter, the respondent again through his guardian/paternal grandfather filed the present petition under Section 127 Cr.P.C. seeking enhancement of the said maintenance as allowed above. It is submitted that however, the said application was filed by the respondent only against the present petitioner and not against his father. It is in the said petition, whereby vide impugned order dated 07.05.2018, the respondent has been granted maintenance enhanced from Rs.1,000/- to Rs.4,000/- per month. Learned counsel submits that since her divorce in 2015, the petitioner has re-married and even a child has been born to her who is currently minor. It is contended that accordingly, the petitioner now has additional responsibilities, and therefore the enhancement of maintenance only qua the petitioner is unfair and unjust and deserves to be set aside.

5. It is further submitted that perusal of judgment dated 15.04.2013 passed by learned Family Court shows that it has been noted therein that the grandfather of the respondent is getting pension and has 5 acres of agricultural land and two shops in his residential house. It is argued that the guardian of the respondent has sufficient source of income whereas the petitioner was ousted from the matrimonial home. As such,

father and grandfather of the respondent are under obligation to maintain the minor child. It is submitted that in passing the impugned order, learned Family Court has failed to appreciate that the marriage of the petitioner was dissolved and the petitioner has not inherited any property from her in-laws. On the other hand, the guardian/paternal grandfather of the respondent as demonstrated above, has sufficient means to maintain the respondent. It is accordingly prayed that the impugned order be set aside.

6. No other argument is made on behalf of the petitioner.

7. I have heard learned counsel for the petitioner and perused the case file in detail.

8. Perusal of record of the case shows that at the time of passing order dated 15.04.2013 (Annexure P1), in the proceeding under Section 125 CR.P.C., the petitioner was working as a Staff Nurse on contractual basis. However, admittedly thereafter, the employment of the petitioner has been regularized and she is currently serving as a Staff Nurse in PGIMS, Rohtak on regular basis and as on January, 2015, is drawing a net salary of Rs.34,615/- per month. Salary certificate of the petitioner was placed on record before the learned Court below as Ex.P17. Learned counsel for the petitioner has not denied this fact.

9. There is no doubt about the legal position in such like cases. Mother also has a responsibility to maintain her minor child. In case of **Smt. Anshu Gupta vs. Adwait Anand @ Devansh Criminal Revision no. 133 of 2013, Law Finder Doc ID # 2296380**, in similar circumstances where the mother of the minor child was also working, the High Court of

Uttarakhand held the mother of the minor child liable to pay maintenance. The argument on behalf of the mother that under the provisions of Section 125 Cr.PC the duty to maintain the minor children was only upon the father, was rejected. Relevant extract of the abovesaid judgment is as follows: –

“Criminal Procedure Code, 1973 Section 125 Indian Penal Code, 1860 Section 8 Grant of maintenance - Liability to maintain a child - Liability to maintain a minor child is always on "any person", if he has sufficient means neglects and refuses to maintain a minor child - "The person" word denotes not only male but a female gender and it cannot be said that such person can only qualify father and not mother - Any "person" use in the provisions of section 125 (1) Criminal Procedure Code includes both mother and father - "Person" would include both male and female and in reference to a minor child whether legitimate or illegitimate mother or father having sufficient means if neglects and refuses to maintain such minor child would be held liable to pay maintenance of such child - Revisionist herself is a Government Teacher, who at present, would be getting a minimum Rs. 1,00,000/- as salary - Revision Petition dismissed.”

10. In the present case, it is not disputed that the petitioner has ‘sufficient means’. Accordingly, in view of the above said factual and legal position, the present petition stands, **dismissed**.

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

05.04.2024

Sunena

Whether speaking/reasoned

Whether reportable

(Nidhi Gupta)

Judge

Yes/No

Yes/No