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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR (F) No.94 of 2018
Date of Decision: 21.05.2024
Reserved on: 23.04.2024

Kamaljit Kaur and another ... Petitioners

Versus

Manjit Singh ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. G.S. Nagra, Advocate,
for the petitioners.

None for the respondent.

MANISHA BATRA, J.

1. The instant petition has been filed by the petitioners seeking modification in the order dated 19.01.2018 passed by the Court of District Judge, Family Court, Ambala in petition bearing CIS No.136 of 2015 titled as *Kamaljit Kaur and another v. Manjit Singh* filed under Section 125 of Cr.P.C. whereby final maintenance to the tune of Rs.2500/- per month to the petitioner No.1 and Rs.1000/- per month to the petitioner No.2, had been directed to be paid.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the petitioners filed the abovementioned petition under Section 125 of Cr.P.C. on the pleas that the marriage of petitioner No.1 was solemnized with the respondent on 02.02.2011. The petitioner No.2 was born out of the wedlock. It was alleged that the respondent and

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his family members used to harass the petitioner No.1 on account of demand of dowry and she was subjected to physical assaults. The respondent also started neglecting and refusing to maintain the petitioner No.1 and she was thrown out of her nuptial home in March 2012 when she was in advance stage of pregnancy and was constrained to stay with her parents. All the expenses of her delivery were borne by her parents. After the petitioner No.1 went back to her matrimonial home, the behaviour of the respondent did not improve and he demanded a sum of Rs.50,000/- from her father which were given to him in cash. Thereafter, again she was thrown out of her matrimonial house along with her minor child. The father of the petitioner No.1 had lodged a complaint which was against him and was pending. The respondent extended threats to perform second marriage and to go abroad. The petitioner No.1 was having no source of income to maintain herself as well as her minor child and was living at the mercy of her parents. While alleging that the respondent was a driver by profession and was earning a sum of Rs.15,000/- per month besides having a share in joint family house and also used to do agricultural work and his total income from all resources was Rs.25000/- per month, a prayer had been made for directing him to make payment of maintenance @Rs.15000/- per month to the petitioners as he had wilfully and intentionally neglected and refused to maintain them.

3. The respondent on his appearance before the learned Family Court, denied the allegations as levelled against him and submitted that he had met with an accident in the year 2013 and had suffered multiple fractures due to which he had become dependent upon others. The petitioner

No.1 had left her matrimonial house as per her own wishes and without any

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rhyme or reason. He was ready to keep and maintain the petitioners. While pleading that he had become permanently disabled and was not earning anything, he prayed for dismissal of the petition.

4. The learned Family Court framed issues on the pleading of the parties. The parties were given opportunity to produce evidence. The petitioners examined petitioner No.1 whereas respondent himself stepped into the witness box. Certain documents were also relied upon. On appraising the evidence produced on record and hearing the contentions raised by both the sides, the learned Family Court, vide judgment dated 19.01.2018, allowed the petition while directing the respondent to pay the aforementioned amount to the petitioners.

5. Feeling dissatisfied with the amount of maintenance so directed to be paid, the present petition has been filed by the petitioners.

6. It is argued by learned counsel for the petitioners that the amount of Rs.3500/- which has been directed to be paid by the respondent to them by the learned Family Court is quite meager and is not at all sufficient to maintain them and to meet with their day to day expenses. It is argued that the respondent possessed driving license for lying heavy vehicles. He used to drive school buses and also fetched income from agricultural resources and, therefore, his monthly income was more than Rs.25000/- per month but the learned Family Court wrongly considered the same as Rs.8,000/- to Rs.10,000/- per month. It is, therefore, argued that the impugned order be modified, the amount of maintenance be enhanced and the respondent be directed to pay a sum of Rs.15,000/- per month as maintenance to the petitioners.

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7. The respondent was duly served with a notice but there was no representation on his behalf. The contentions raised by learned counsel for the petitioners have been given due deliberation and the record has been carefully perused by this Court.

8. Having perused the impugned order, it is apparent that the fact that the petitioner No.1 was legally wedded wife of the respondent and the petitioner No.2 is his son who was only three years old at the time of filing of the petition in the year 2015, is not in dispute. It has also not been disputed by the respondent that the petitioners were not capable of maintaining themselves. One of the grounds as taken by the respondent for contesting the petition was that the petitioner No.1 had left her matrimonial house at her own despite his readiness and willingness to keep and maintain her. He had never neglected to do so. However, the evidence produced on record does not show that any sincere efforts had been made by the respondent at any point of time to rehabilitate the petitioners with him. Even a petition filed under Section 9 of the Hindu Marriage Act by him is also shown to have been withdrawn subsequently. Therefore, it cannot be stated that the petitioner No.1 had left her matrimonial house as per her own will and, therefore, was not entitled to claim any maintenance.

9. The next plea as taken by the respondent was that he had met with an accident and thereafter had become disabled and was not in a position to earn anything. The learned Family Court had observed and rightly so that no disability certificate or legal evidence had been produced on record by the respondent in this regard. This observation has not been challenged by the respondent by filing any cross objections/revision petition.

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10. Now comes the question as to whether the learned Family Court had rightly assessed his income to be @Rs.8000/- to Rs.10,000/- per month. In my considered opinion, an error had been committed by the learned Family Court in this regard because when it had been observed that the petitioner had failed to prove any evidence on record qua his disability and it had also not been disputed by him that before the alleged accident, he was earning a sum of Rs.15000/- per month, then, there was no reason to hold that he was not capable of earning or was not earning a sum of Rs.15,000/- per month. Though there is no reason to find fault with the observations made by learned Family Court that the petitioners had not produced any documentary evidence to show that he owned any agricultural land and did any agricultural work and had an additional source of income but it may be reiterated that nonetheless the respondent was presumed to be earning a sum of Rs.15,000/- per month at the time of passing the impugned order. The respondent being husband of petitioner No.1 and father of petitioner No.2 was under an obligation to maintain his wife and child irrespective of the fact that he owned any property or not and this was his solemn obligation to do so as he could not say that he was unable to maintain them. No doubt, the well settled proposition of law is that the maintenance amount awarded must be reasonable and realistic and it should neither be so extravagant that it becomes unbearable for the husband to pay so nor it should be so meager that it drives the wife/child to penury and the sufficiency of the quantum has to be adjudged so that the wife and child are able to maintain themselves with reasonable comfort. In this case, the learned Family Court directed him to pay an amount of Rs.1000/- per month only to the petitioner No.2 and

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Rs.2500/- per month to the petitioner No.1. It appears that learned Family Court was oblivious of the realities that the amount so directed to be paid was grossly insufficient since as discussed above, the respondent was presumed to be earning at least a sum of Rs.15,000/- per month. There is nothing on record to show that he had any other liability. The amount of maintenance to be awarded to the petitioners should have been such which could be stated to be reasonable considering the status of the parties and the kind of life which the petitioner No.1 was used to when she lived with her husband. The petitioners have been able to establish that the respondent had not been maintaining them without any sufficient cause. The amount of Rs.1,000/- and Rs.2500/- per month respectively payable to the petitioners can at all not be stated to be sufficient for meeting with the day to day requirements of food, lodging, expenses on extracurricular activities as well as education, expenses for medicines, school fees, coaching etc. of the petitioner No.2 and the requirement of petitioner No.1 to live a life of dignity which could be stated to be at par with the status of the respondent. As such, the impugned order is modified and the amount of maintenance awarded to be petitioner No.1 is directed to be enhanced from a sum of Rs.2500/- to Rs.4000/- per month and for the petitioner No.2 from the sum of Rs.1000/- per month to Rs.2500/- per month as the same is neither luxurious nor penurious and is reasonably commensurate with the income of the respondent.

10. It is clarified that this amount shall be payable to the petitioners from the date of filing of the petition under Section 125 of Cr.P.C. by them.

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11. The petition stands allowed in the above terms.

21.05.2024
manju

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No