

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR-F-726-2022(O&M)

Date of order: 24.04.2024

Abhishek Chaudhuri

.....Petitioner(s)

Vs.

Monica Chaudhuri & Another

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Kuldeep Rai, Advocate and
Mr. Shivam Adhikary, Advocate
for the petitioner.

Mr. Nimanyu Gautam, Advocate
for the respondents.

Nidhi Gupta, J.

CRM-17481-2024

This is an application under Section 482 Cr.P.C. for
placing on record Annexure P5 to P11.

After going through the contents of the application,
which is supported by affidavit of the applicant/petitioner, the same is
allowed subject to all just exceptions and Annexure P5 to P11 are taken on
record.

MAIN CASE

Challenge in the present petition is to order dated
22.07.2022 passed by learned Principal Judge, Family Court, Ferozepur,
whereby the petitioner/husband has been directed to pay ad-interim

maintenance of Rs.30,000/- per month to respondent No.1/wife and Rs.20,000/- per month to respondent No.2/minor daughter.

2. Learned counsel for the petitioner inter alia submits that the petitioner was married to respondent No.1 on 08.02.2014 as per Hindu rites and rituals. Respondent No.2 was born out of this wedlock on 29.05.2018, who is currently in the care and custody of respondent No.1. Learned counsel states that respondent No.1 left the matrimonial home on 20.11.2020 on the ground that she had gone to attend marriage of her brother. But she never returned thereafter. Subsequently on 31.5.2021, the present petition under Section 125 Cr.P.C. was filed by the respondents, wherein the impugned interim maintenance has been granted.

3. Learned counsel contends that the interim maintenance as awarded by the learned Family Court is exorbitant as the petitioner is not working. It is stated that the petitioner was earlier working as a Medical Officer in the Army on Short Service Commission but has retired from the said post on 10.08.2023 and has been released vide order dated 01.04.2023 (Annexure P5). It is submitted that the officers whose total SSC service does not exceed 14 years or more than 55 years of age, are not entitled to pension and as such, the petitioner is not drawing pension from the Army. Moreover, the petitioner has additional responsibility of his old and ailing father.

4. Learned counsel argues that on the other hand, respondent No.1 is a very well-qualified lady. She is M.Tech. and is employed as a Lecturer. However, this fact has been concealed by

respondent No.1 before the learned Family Court. It is contended that Respondent No.1 had continuously misled the learned Family Court regarding her working position and it is on this account that an exorbitant maintenance has been awarded. It is further submitted that out of the retiral benefits received by the petitioner, an amount of Rs.6,14,840/-, along with litigation expenses of Rs.11,000/-, has already been deducted by the Office of Principal Controller of Defence Accounts and given to the respondents. Till date, the petitioner has paid an amount of approximately Rs.12 lakh to the respondents. It is accordingly, prayed that the impugned order be set aside.

5. Per contra, learned counsel for the respondents submits that respondent No.1/wife was previously teaching in a college. However, currently, she is pursuing her Ph.D. It is stated that respondent No.1 is living at the mercy of her father who is suffering from cancer. As such, respondent No.1 has no source of income. The petitioner is in arrears of Rs.5.5 lakh of maintenance. Learned counsel further refers to the affidavit of assets and liabilities filed by the petitioner (Annexure P11) and states that it has been wrongly stated therein by the petitioner that he has received only Rs.20 lakh as retiral benefits. In actual fact, the petitioner has received Rs.56 lakh as retiral benefits. Learned counsel also refers to Column No.61 (available at page 33 of the application) and points out that it has been admitted by the petitioner himself that he is the joint owner of a property with his father in Kolkata as also the joint owner of a property in Gurugram with his mother, which was sold by him. However, he has not disclosed the amount of sale in the affidavit.

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

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

8. First and foremost, it is not denied by the petitioner that at the time of passing of the impugned order on 22.07.2022, the petitioner was working as a Medical officer in the Indian Army. The petitioner had admitted before the learned Family Court in Para 18 of his written statement that he is posted as Lieutenant Colonel and drawing a salary of Rs.1,29,182/-. It is only subsequently before this Court that the petitioner has claimed that he has been relieved/ has been retired from the said post on 10.8.2023. Needless to say, the said factors are a matter of trial and will be determined by the learned Family Court upon leading of evidence by the parties.

9. For the purposes of determining the quantum of interim maintenance to be granted to the respondents, it is sufficient that the relationship between the parties is admitted. Further, it is not in dispute that the petitioner is an able-bodied man. As such the petitioner cannot absolve himself of his responsibility to maintain his wife and minor child.

10. It is also prima facie established on record that the petitioner is a man of sufficient means, as per his affidavit of assets and liabilities Annexure P11. Even if contention of counsel for the respondents that the petitioner has received ₹56 lakhs as retiral benefits is ignored, it is the petitioner's own case that he has received Rs.20 lakh as retiral benefits, of which Rs.6,14,840/- along with litigation expenses of Rs.11,000/- is

stated to have been deducted by the Office of Principal Controller of Defence Accounts and given to the respondents. Admittedly, the petitioner is also a joint owner of properties with his parents. It is stated in the affidavit that one of those properties which was owned by the petitioner along with his mother has now been sold. Though the petitioner has not disclosed the sale amount, however as the said property was a 3 BHK apartment in Gurugram, it would be safe to presume that the same would have been sold for a fairly exorbitant amount. The petitioner has also not attached his Income Tax Returns with the said affidavit. It is also evident that the petitioner has sufficient investments as noted in Column 64 of the affidavit (Annexure P11).

11. As regards contention of the petitioner that the respondent No.1 is working as a lecturer and is therefore, able to maintain herself, I do not find any merit in the same. Reliance may be placed upon judgment of the Hon'ble Supreme Court in **"Shailja & Another Vs. Khobbanna"** Law Finder Doc ID # 836697, relevant part of which is reproduced hereinbelow:-

"Wife and son granted maintenance of Rs. 25,000/- by Family Court - High Court reduced the maintenance of Rs. 12,000/- on the ground that wife was capable of earning - Order of High Court set aside.

(1) Merely because wife is capable of earning is not sufficient reason to reduce the maintenance.

(2) Whether wife is capable of earning or whether she is actually earning are two different requirements.

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8. That apart, we find that the High Court has proceeded on the basis that the appellant No.1 was capable of earning and that is one of the reasons for reducing the maintenance granted to her by the Family Court. Whether the appellant No.1 is capable of earning or whether she is actually earning are two different requirements. Merely because the appellant No.1 is capable of earning is not, in our opinion, sufficient reason to reduce the maintenance awarded by the Family Court.”

12. It is not the case that the respondent is sitting idle at home. It has been stated that she is pursuing her Ph.D. Except for the bald statement of the petitioner there is nothing whatsoever on record to show that she is presently gainfully employed. It is also not denied by learned counsel for the petitioner that father of respondent No.1 is suffering from cancer; and that she has the sole responsibility of the minor child/respondent No.2.

13. In view of the above, I find no ground is made out to interfere in the impugned order. Present petition accordingly stands **dismissed**.

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

24.04.2024
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No