

CRR(F)-777-2022

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**312 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRR(F)-777-2022

Date of decision: 24th January, 2024

Abhishek Kaushik

...Petitioner(s)

Versus

Yogita and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Priyanshu Kamra, Advocate for the petitioner.

MANISHA BATRA, J (ORAL):-

The petitioner is challenging order dated 20.07.2022 as passed by learned Additional Principal Judge, Family Court, Bhiwani in case bearing CNR No. HRBH01-002670-2019 titled as 'Yogita and another vs. Abhishek Kaushik' has filed under Section 125 of Cr.P.C. by the respondent, whereby he had been directed to pay an amount of ₹ 8000/- per month to respondent No.1 and ₹ 4000/- to respondent No.2 as final maintenance.

2. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned petition under Section 125 of Cr.P.C. had been filed by respondent No.1 for herself as well as on behalf of her minor daughter i.e. respondent No.2 on the grounds that she was married with the present petitioner on 15.02.2015 according to hindu rites and ceremonies. The minor respondent No.2 was born on 05.12.2015. She alleged that the petitioner and his family members were not satisfied with the dowry articles

which were given to them at the time of her marriage and they started raising demand of car, cash amount of ₹ 7,00,000/- for the purchase of a new house and gold jewellery from respondent No.1 and her parents and on account of non- fulfillment of those demands, she was subjected to harassment, cruelty and mal-treated at their hands. While quoting some instances whereby her husband and other members of his family had been ill-treating her, it was alleged that she was thrown out of her matrimonial house on 02.09.2018 by extending threat that her daughter and herself would be done to death if she tried to enter therein. It was further pleaded that she had no source of income and was unable to maintain her daughter and herself. She was fully dependent upon her parents whereas the present petitioner was drawing monthly salary of ₹ 80,000/- by serving in one Indus Towers Company at Gurugram and had neglected and refused to maintain them. She accordingly made a prayer for directing him to pay a sum of ₹40,000/- as maintenance allowance.

3. A perusal of the impugned order reveals that due opportunity was given to the respondent to file reply and to both the parties to lead evidence and after considering the contentions as raised by both sides and apprising the evidence available on record, the learned Additional Principal Judge, Family Court has passed the impugned order.

4. The respondent No.1-wife was duly served with notice of motion but did not chose to appear and was proceeded against *ex-parte* vide order dated 09.01.2024.

5. Learned counsel for the petitioner has vehemently argued that

the impugned order is not sustainable in the eyes of law and is liable to be set aside as the same is suffering from material infirmities. He has further argued that while passing the impugned order, the learned Family Court ignored the fact that there was ample evidence on record to prove that it was respondent No.1 who had left her matrimonial house as per her own will on account of the fact that she was of troublesome nature and was making it difficult to live together with other family members of the petitioner. A separate house by taking loan of ₹ 10,00,000/- had been purchased by the petitioner and they had started living separately. He has further argued that the petitioner had never neglected and refused to maintain his daughter and herself. The respondent No.1 was well educated person having degrees of M.A. and B.Ed. She also used to take dance classes. The petitioner had left Indus Towers Ltd. Company as on 19.03.2019. He had joined Kutumbh Care Pvt. Ltd. as on 04.03.2020 and his monthly income was around ₹ 25,000/- only. The learned Family Court gravely erred in holding that he was earning a sum of ₹ 80,000/- while working in Indus Towers Ltd., whereas his income was only ₹ 39,576/- at that time. The fact that he remained unemployed was also not considered.

6. It is further argued that the amount of maintenance as directed to be paid by him to respondents is excessive and he is unable to pay the same due to the fact that his monthly income is around ₹ 24,100/- and that apart, he has to pay EMI to the tune of ₹ 9,000/- per month and he has also to incur rental expense apart from other expenses. With these broad submissions, it is argued that the impugned order be set aside, the amount of

maintenance being highly disproportionate to his income and expenditure.

7. I have heard learned counsel for the petitioner at considerable length and have gone through the record carefully.

8. At the outset, it would be important to mention that the petitioner had moved an application for allowing him to produce certain documents before this Court by way of additional evidence which has been allowed, subject to just exceptions. These documents are Annexure P-1 which is copy of an offer/work assessment letter dated 04.03.2020 offering the petitioner appointment in one Kutumbh Care Pvt. Ltd. company with offer of salary of ₹ 25,900/-, Annexure P-2 copy of his bank statement showing that during the period from 08.12.2021 to 30.07.2022, an amount of around ₹10,000/- is deducted as loan repayment from his bank account, Annexure P-3 copy of payment voucher, Annexure P-4 copy of an order passed in a petition filed by respondent No.1 under the Provisions of Domestic Violence Act, 2005 and Annexure P-5 photocopy of statement of full and final settlement issued by Indus Towers Ltd. showing that the petitioner had left this company as on 19.03.2019. The claim of petitioner is that he remained unemployed during the period from March 2019 till March 2022 and after joining the abovementioned Kutumbh Care Pvt. Ltd. in March, 2020, his monthly income has been reduced as his gross salary was ₹ 25,900/- only.

9. It is relevant to note that the impugned order had been passed by the learned Family Court as on 20.07.2022. All documents which are sought to be considered by way of additional evidence are pertaining to the

period much before the date of passing of the impugned order. There has been no explanation on the part of the petitioner as to why these documents could not be produced by him before the learned Family Court at the appropriate stage. It is also revealed from a perusal of the impugned order that an official from Indus Towers Company Pvt. Ltd. had been summoned as a witness by respondent No.1 and who had deposed that in the month of February, 2019, the gross salary of the petitioner was ₹ 39,576/-. The contents of the impugned order reveal that in the reply filed by him, the respondent had stated that he was not doing any work without specifying that he had left Indus Towers Company at that stage. It is also not shown that any affidavit disclosing the details of his income, assets or liabilities if any was produced by him before the Family Court. The learned Family Court after considering the fact that in the month of February, 2019 his income was around ₹39576/- had directed him to pay the aforementioned amount as maintenance.

10. Undoubtedly, while passing an order for grant of maintenance, the financial capacity of the husband, his actual income, reasonable expenses for his maintenance and liabilities if any, are also required to be taken into consideration and the Court has to have due regard to the standard of living of the husband as well as the ever rising index of prices and high costs of living but at the same time, the plea of the husband that he does not possess any source of income does not absolve him his moral duty to maintain his wife at all if he is able bodied person and qualified person. Section 125 of Cr.P.C. provides a swift and cheap remedy against any person who neglects

or refuses to maintain his wife or children. The prime object of this provision is to prevent starvation and vagrancy and to compel to a men to perform the moral obligation which he owes to the society in respect of his wife and children so that they are not left beggared or destituted on the scrapheap of the society and thereby driven to a life of vagrancy, immorality and crime for their subsistence.

11. In this case, the petitioner had claimed that the wife was giving dance classes and was a highly qualified person and hence capable of maintaining herself. However, before the Family Court he could not produce any evidence to show that the wife was having any independent source of income. Admittedly, the parties are living separately since 2018. Nothing has been brought on record to show that the petitioner has tried to rehabilitate the respondents with him during the intervening period. His sole deposition could also not be considered sufficient to prove that respondent No.1 had willingly withdrawn from his company. Then on the one hand, he claimed that he had purchased a separate house for the respondent by taking loan and was paying around ₹ 10,000/- as EMI but on the other hand, he has submitted that he is making payment of an amount of ₹6,000/- as rent which cannot be believed because he is presumed to be living in the house so purchased. Only due to the reason that he is paying EMI does not absolve him of liability to pay maintenance to his wife as it is his moral as well as legal obligation to maintain the respondents who are entitled to maintain the standard of living which is neither luxurious nor penurious and are also entitled to lead a decent life yet at par dignity and status of the petitioner and

also keeping in view the commitment of the petitioner to meet the basic needs and requirements of food, shelter, medical treatment etc. of both the respondents and educational expenses of minor respondent No.2 who is his daughter. Keeping all these facts and all the consideration, I am of the considered opinion that the amount which had been directed by learned Family Court to pay as maintenance to the respondents cannot be stated to be excessive or inconsistent with the income/ status of the petitioner and is bare minimum and commensurate with the day to day requirements of the respondents. The impugned order does not show any illegality or manifest injustice warranting interference in the findings given by learned Family Court. Accordingly, finding no merits, the petition is dismissed.

[MANISHA BATRA]
JUDGE

24th January, 2024
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |