

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR-F-654-2019(O&M)

Date of order: 15.04.2024

Sumit

.....Petitioner(s)

Vs.

Nicky & Another

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. B.S. Rathee, Advocate
for the petitioner.

Mr. Vikram Singh, Advocate
for the respondents.

Nidhi Gupta, J.

Challenge in the present petition is to order dated 23.07.2019 passed by learned Additional District and Sessions Judge, Principal Judge, Family Court at Sonipat, Camp Court at Gohana whereby Rs.10,000/- per month has been granted as final maintenance to the respondents (Rs.5,000/- to respondent No.1/wife and Rs.5,000/- to respondent No.2/child) from the date of filing the petition under Section 125 CR.P.C.

2. Brief facts of the case as stated by the petitioner are that the marriage of the petitioner was solemnized with respondent No. 1 as per Hindu Rites and Ceremonies on 28-05-2015 at Village Kilo, Distt. Rohtak. The marriage was a simple one and before and after the marriage, respondent No. 1 lived in adultery and left the house of the petitioner

voluntarily before the birth of the respondent No. 2 i.e. Minor son. Respondent No.1 disclosed to the petitioner on the night of 15.06.2015, that she is pregnant for two months and having abdominal pain and when the petitioner asked her to take her to the doctor, she left her matrimonial home by calling someone early in the morning on 16.06.2015 stating to be her cousin brother. The respondent No. 1 was again brought back on 19.06.2015 and during this intervening period, she remained out of her parental home for three days and did not disclose her whereabouts. The respondent No. 1 finally left her matrimonial home on 22.06.2015. So, she is not entitled for any maintenance.

3. Learned counsel for the petitioner further submits that the impugned maintenance is on the higher side as the learned Family Court in passing the impugned order has ignored the fact that the petitioner is simple BA pass whereas respondent No.1 is M.Sc. in Geology. It is submitted that the petitioner is only assisting his father in his agricultural activities whereas respondent No.1 is teaching and earning handsomely. Accordingly, the impugned order deserves to be set aside.

4. Learned counsel further submits that the learned Family Court has incorrectly assessed the income of the petitioner to be Rs.37,500/- per month. The learned Family Court in passing the impugned order has also ignored the fact that vide decree dated 23.07.2019, parties have also been granted divorce under Section 13 HMA. It is accordingly prayed that the impugned order be set aside.

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

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

7. Perusal of record of the case shows that the petitioner was married to respondent No.1 on 28.05.2015. Respondent No.2 was born out of this wedlock on 29.06.2016. It was the allegation of the petitioner against respondent No.1 that she was having an adulterous relationship with someone. Accordingly, the parties started living separately since 22.06.2015. As respondent No.1 had no source of income to maintain herself or her minor child, she sought refuge in her parents' home and is currently stated to be living at her parental home at the mercy of her parents. Thereafter, the respondents filed the present petition under Section 125 Cr.P.C. on 03.08.2016.

8. The main plank of challenge by the petitioner – husband to the impugned maintenance is on the ground that the respondent no.1 was living in adultery and therefore, the minor child respondent no.2 is not born out of the loins of the petitioner. However, perusal of record reveals that when an application was filed by respondent No.1 for conducting DNA test of the minor child and the petitioner, the petitioner had refused for the same. Relevant findings of the learned Family Court are reproduced hereinbelow:-

“13. Still more, if the petitioner No. 2 did not born out of the loins of the respondent, then the respondent very easily could have proved this fact by way of conducting his DNA test vis a vis the minor child i.e. the easily available legal recourse to the respondent, which he did not opt to exercise for the reasons best known to him, which in turn means that the respondent

No. 1 has withheld a very material evidence. Here it is also worth while to mention that not to speak of availing the aforesaid easily available recourse of getting conducting his DNA test vis a vis the minor child, the respondent even went to the extent of opposing the application for getting conducted his DNA test vis a vis the minor child preferred by the petitioner No. 1 herself in a complaint under Section 12 of the DV Act, the attested copy of which stands placed in the connected case bearing No. DMC 393/2016 in an petition under Section 13 of the HMA, on the plea that the DNA test claimed by the petitioner No. 1 was very painful test and that the petitioner No.1 could have proved her case by leading cogent evidence. Needless to say that the aforesaid conduct of the respondent leaves no other option before this Court except to conclude it inevitably and irresistibly that the minor child did born to the petitioner No. 1 from the loins of the respondent only and that the respondent in this regard has leveled just false and frivolous allegations against the petitioner No. 1.”

9. It has not been denied by learned counsel for the petitioner that marriage between the petitioner and respondent No.1 was consummated; and that he had refused to get his DNA test conducted. As such, this argument of the petitioner stands rejected.

10. As regards argument of the petitioner that respondent No.1 is working as a Teacher, learned counsel for the petitioner has admitted that this plea was not raised by the petitioner before the learned Family Court, let alone producing any proof in respect of the same. Learned counsel for the petitioner has then stated that it is only after passing of the impugned order on 23.07.2019, that respondent No.1 started working.

However, in support of this claim, no pleadings or evidence have been placed on record by the petitioner.

11. As regards income of the petitioner, it was the pleaded case of respondents before the learned Family Court that the petitioner was a Financer and a Property Dealer and was earning Rs.60,000/- per month from the said sources. However, as no proof was attached by the respondents in support of the said contention, the same was rejected by the learned Family Court. Respondent No.1 had further asserted that the petitioner was having a share in Ramanuj School, Jharothi, District Rohtak, but even this plea of the respondents remained unsubstantiated in the absence of any oral or documentary corroborative evidence produced by them. However, the petitioner in his cross-examination as RW1 has admitted that he was having 4 acres of agricultural land. In view of this admission, learned Family Court concluded that as approximate income from 1 acre of land is Rs.1-1.25 lakh per year as such, the petitioner was drawing an income of Rs.4-5 lacs per year which is approximately Rs.37,500/- per month.

12. Learned counsel for the petitioner has been unable to disprove the above said findings.

13. Before parting, it may be pointed out that the respondents have also sought enhancement of maintenance/modification of impugned order dated 23.07.2019 before this Court by way of CRR-F-541-2019, wherein by order of even date, Notice of Motion has been issued.

14. In view of the above, I find no merit in the present petition and the same is accordingly, **dismissed**.

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

15.04.2024
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No