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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-5049-2024 (O&M)
Date of decision: 04.09.2024

Vishnu

...Petitioner

Versus

Sumit Devi

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Sunil Polist, Advocate for the petitioner.

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India against the order dated 19.04.2024 (Annexure P-4) passed by the Chief Judicial Magistrate, Kaithal in COMA-113-2022 titled as “Sumit Devi Vs. Vishnu” and also against the order dated 25.07.2024 (Annexure P-6) passed by the Sessions Judge, Kaithal in CRA-97-2024 granting interim maintenance and dismissing the appeal filed by the petitioner.

2. Learned counsel for the petitioner has submitted that the petitioner is a retired Army official and the pension amount which he is getting in hand is Rs.20,700/- per month and out of the said amount, he has to pay loan which he had taken for a motorcycle and a house and thus, the amount of interim maintenance ordered by virtue of the impugned order to



the extent of Rs.4000/- per month to the wife and Rs.1500/- per month to each of the children is excessive and same be reduced.

3. This Court has heard learned counsel for the petitioner and has perused the paper book and finds no merit in the present revision petition and the same deserves to be dismissed for the reasons which are recorded hereinafter.

4. Respondent-wife had filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 read with Sections 18 to 20 & 22 of the Act, on the averments that the marriage of respondent with the petitioner was solemnized on 14.05.2003 and two children namely Priti and Mohit were born who are living under her care and custody and both the minor children are school going children. It is further stated in the application that the respondent and her parents had given sufficient dowry to the petitioner and her parents had also spent an amount of Rs.6 lacs on the marriage and that the petitioner and his family were very greedy persons and used to taunt and tease the respondent for bringing less dowry and also used to beat her and also made illegal demands of motorcycle. It was alleged that the present petitioner had bad habits and he used to regularly drink and beat up the respondent and had also shunted out the respondent along with minor children, in three clothes and that the respondent had made a complaint to the Police Station. It was specifically averred in para 8 of the application (Annexure P-2) that the respondent was a house wife and she did not have any independent source of income to maintain herself and her minor children whereas the present petitioner had retired from the Indian Army and was getting a monthly pension of



Rs.35,000/- and it was his obligation to maintain the respondent and the minor children. A reply (Annexure P-3) was filed by the present petitioner to the said application and in the said reply, the aspect of marriage between the petitioner and respondent and also the fact that there are two minor children who were born from the said wedlock, was not disputed. It was stated in para 9 of the reply on merits to the said application that the petitioner was spending pension on the respondent and both the minor children and also on his parents. It would be relevant to note that there is nothing on record, much less any documents to show that the petitioner was paying any amount to the respondent or the children.

5. The Chief Judicial Magistrate, Kaithal, while considering the application for grant of interim maintenance, vide its order dated 19.04.2024 had observed that the existence of a domestic relationship between the petitioner and respondent is admitted and marriage between the parties took place on 14.05.2003 and thus, the petitioner could not be absolved from his moral as well as legal duty to maintain his wife and children and accordingly, directed the petitioner to pay a sum of Rs.4000/- per month to the respondent-wife and a sum of Rs.1500/- per month to each child from the date of the complaint petition till the final decision of the case. While passing the said impugned order, reliance was placed upon the judgment passed by the Hon'ble Supreme Court in the case of **Chaturbhuj Vs. Sita Bai** reported as **2008(1) CCC 100 (SC)** in which it was observed that the object of paying maintenance is to prevent vagrancy and destitution and it was the natural duty of a man to maintain his wife, children and parents when they are unable to maintain themselves. The fact that it is the



case of the respondent that she did not have any independent source of income and also the fact that the present petitioner was retired from the Indian Army and the fact that there are two minor children from the said wedlock, was also taken into consideration.

6. Against the said order dated 19.04.2024 passed by the Chief Judicial Magistrate, Kaithal, two appeals were filed i.e. one by the petitioner-husband and another by the respondent-wife. The petitioner was seeking reduction of the said amount of maintenance, whereas respondent-wife was seeking enhancement of the said amount of maintenance and it was the case of the respondent-wife that the total amount of Rs.7000/- per month was wholly insufficient to meet the needs of herself and her two minor children. However, both the appeals were dismissed. The appeal filed by the present petitioner was dismissed by observing that an amount of Rs.7000/- to be paid to the wife and two minor children cannot be stated to be excessive and thus, at an interim stage, same has been rightly granted.

7. On a pointed query raised by this Court as to whether the amount of maintenance which had been ordered vide order dated 19.04.2024 and which had been upheld vide order dated 25.07.2024, has been paid to the respondent and minor children or not, learned counsel for the petitioner has replied to the said query in the negative and on the said ground alone, the present revision petition deserves to be dismissed. However, this Court has considered the pleas of the parties and has also perused the paper book. In the reply (Annexure P-3) filed by the petitioner, it has specifically been stated that the petitioner has retired from the Army and is getting a pension of Rs.19,000/- per month, although it is the case of



the respondent that his pension is to the tune of Rs.35,000/- per month. During the course of the arguments, it has been argued by learned counsel for the petitioner that the petitioner is receiving an amount of Rs.20,700/- per month, in hand. On the other hand, respondent-wife is stated to be a house wife and there is nothing on record to suggest that she is working or earning any money. By virtue of the impugned order, only an amount of Rs.4000/- per month has been ordered to be paid to the respondent-wife and an amount of Rs.1500/- per month each has been ordered to be paid to two minor children. The petitioner, being the husband and father, is duty bound to take care of his wife and two minor children. Total amount of Rs.7000/- per month to maintain all the three i.e. wife and two minor children cannot even remotely be stated to be excessive. In today's time, it is extremely difficult to meet the needs of three persons in Rs.7000/- per month.

8. A perusal of para 9 of the reply on merits (Annexure P-3) to the application (Annexure P-2), filed by the petitioner would show that it is his case that pension is being spent on the respondent, both children and old parents. Nothing has been shown to this Court as to how the amount is being spent on the respondent-wife and two children and in case the petitioner is spending money on them then as to why the petitioner has chosen to file the present revision petition and has not complied with the orders passed by the Courts as the petitioner could have easily paid the amount of maintenance through bank account or through deposits in the Court so as to prove the plea taken in para 9 of the reply on merits to the application. It is apparent that the petitioner is not taking care of the respondent and his minor children. The plea sought to be raised that certain



loan amounts are to be paid, is completely beyond the pleadings in the reply (Annexure P-3). No such plea has been taken even before the Chief Judicial Magistrate and the plea, which is now being taken, is an afterthought. At any rate, since it is the duty of the petitioner to maintain his wife and his minor children, thus, the present revision petition being meritless, deserves to be dismissed and is accordingly, dismissed.

9. The dismissal of the present revision petition is only dismissal with respect to the appeal filed by the petitioner before the First Appellate Court and same should not be construed as a dismissal or upholding of the interim order dated 19.04.2024 even qua any petition to be filed by the respondent.

10. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

04.09.2024

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No