

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

222

CRR-F-332-2024(O&M)

Date of order: 09.04.2024

Shalini Walia & Another

.....Petitioner(s)

Vs.

Arun Walia

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Ritu Punj, Advocate
Mr. Rohit Dhiman, Advocate
for the petitioners.

Nidhi Gupta, J.

CRM-10002-2024

This is an application under Section 5 of Limitation Act for condonation of delay of 52 days in filing the petition.

After going through the contents of the application, the same is allowed subject to all just exceptions and delay of 52 days in filing the present petition is condoned.

MAIN CASE

Prayer in the present petition is for modification of the judgment dated 24.08.2023 passed by learned Additional Principal Judge, Family Court, Ludhiana whereby the respondent/husband has been directed to pay Rs.5,000/- per month as maintenance to petitioner No.1/wife and Rs.10,000/- per month to petitioner No.2/child.

2. Learned counsel for the petitioners inter alia submits that petitioner No.1 was married to the respondent on 15.01.2012. One son/petitioner No.2 was born out of this wedlock, who is presently residing with petitioner No.1. Due to matrimonial discord, the petitioners were

turned out of the matrimonial home on 25.12.2019. It is then that the petitioners were constrained to file the present petition under Section 125 Cr.P.C. for grant of maintenance (Annexure P1). It is submitted that initially, petitioner No.2/minor son was granted interim maintenance of Rs.7,000/- per month; however, vide impugned order dated 24.08.2023 petitioner No.1/wife has been granted Rs.5,000/- per month and petitioner No.2 minor son has been granted Rs.10,000/- per month as final maintenance. Learned counsel submits that petitioner No.2 is a special child with difficulty in speech and is undergoing speech therapy. The respondent is earning more than Rs.7 lakh per annum. Besides this, he is also the owner of three cars and has property from which he is having income of more than Rs.50,000/- per month as rent. It is accordingly prayed that the present petition be allowed and maintenance as awarded to the petitioners be enhanced.

3. No other argument is made on behalf of the petitioners.
4. I have heard learned counsel for the petitioners and perused the case file in detail.
5. Perusal of record of the case shows that upon notice in the petition filed by the petitioners under Section 125 Cr.P.C., the respondent had appeared and had filed his written statement taking objections u/s 125(4) Cr.P.C. regarding maintainability of the said proceeding by alleging that petitioner No.1 was in an illicit and extra-marital relationship with one Jashan Mehra and when the respondent had asked her to discontinue the said relationship, she had flatly refused. It has also been alleged by the respondent that the respondent in this regard had also filed a complaint No.93056 on 26.12.2019 at Police Station Jamalpur, Ludhiana. Further allegations made by the respondent against petitioner no.1 are as under:-

“On 26.12.2019, the respondent met the SHO of PS Jamalpur and showed them the photographs of the petitioner no. 1 and on seeing the photographs the police identified the petitioner no.1 and told the respondent that she had been visiting the

police station alongwith the father and mother of the said Jashan Mehra in connection with case FIR no.29/2018 registered against Jashan Mehra. The police further told the respondent that the said Jashan Mehra is PO in the said FIR and police was in his search. The SHO rang up the father of Jashan Mehra and asked him to produce Jashan Mehra but the petitioner no.1 rang up SHO and requested him not to take any action against Jashan Mehra. Till date, the petitioner no.1 is illegally residing with Jashan Mehra in illicit and extramarital relationship. The respondent also reported the matter to Commissioner of Police, Ludhiana, vide application no. 1744171 dated 06.02.2020. The respondent was and is still ready to join the company of the petitioner no.1 but it was she, who refused to join his company without any reasonable or probable cause and deserted him. The respondent has already filed petition under Section 9 of HMA against the petitioner no.1”.

6. Be that as it may, it needs be noticed that although the petitioner has alleged that the respondent is earning ₹7 lakhs per annum, however, the respondent has very fairly admitted before the court below that he was earning Rs.80,000/- per month. It is also pertinent to mention that educational qualification of Petitioner No.1 is M.Com. and she has admitted before the court below that she is earning Rs.24,400/- per month and that she is not assessed for income tax. The legal position is very clear. As per section 125 CRPC maintenance is admissible only to a wife who is ‘unable to maintain herself’; further, as per the established precepts of law only ‘supportive maintenance’ is to be paid by the husband. Moreover, I find the impugned order to be very just and fair as besides awarding the impugned maintenance, the learned Family Court has further directed as under:-

“...that the respondent shall pay a sum of Rs. 5,000/- per month to the petitioner no.1 as supportive maintenance as she is earning more than Rs.24,000/- per month and

Rs.10,000/- per month to the petitioner no.2 as maintenance from the date of filing the petition. Considering the rate of inflation, it is ordered that the petitioners shall be entitled to get the maintenance increased at a flat rate of 5% per annum from the date of passing of this order and this increase shall start after the lapse of one year from today....

(Emphasis added)

7. I find no ground is made out to interfere in the impugned order. Present petition accordingly stands **dismissed**.
8. Pending application(s) if any also stand(s) disposed of.

09.04.2024

Sunena

Whether speaking/reasoned

Whether reportable

(Nidhi Gupta)

Judge

Yes/No

9Yes/No