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121 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR(F)-1680-2023 (O&M)
Date of Decision: 09.09.2024

GURCHARAN KUMAR

.....PETITIONER

Vs.

MAMTA ARORA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present:- Mr.Pankaj Bali, Advocate,
for the petitioner.

Mr. Arjun Veer Sharma, Advocate,
for the respondents.

HARPREET KAUR JEEWAN J.

1. The present Criminal Revision Petition has been filed for quashing the order dated 03.11.2023 passed by the learned Additional Principal Judge, Family Court, Ludhiana, Camp Court, at Khanna, granting an interim maintenance to respondent Nos. 1 & 2 during the pendency of a petition under Section 125 Cr.P.C filed by the respondents.

2. Learned counsel for the petitioner *inter alia* contends that despite the income of the petitioner being ₹9,000/- per month and he has to bear with his personal expenses as well, the Family Court has awarded a sum of ₹10,000/- per month to respondent No. 1-wife and a sum of ₹5,000/- per month to respondent No. 2-child as an interim maintenance. The Family Court has even ignored the affidavit of the petitioner (Annexure P-7). It is contended that the petitioner was running a small four wheeler/*Tempo*



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(‘*Chota Hathi*’) whereas respondent No. 1-wife is highly qualified and she is running a boutique as per the photographs and is earning well.

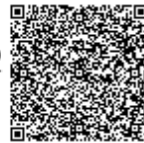
3. On the other hand, learned counsel for the respondents reiterated the reasons recorded by the learned Family Court and opposed the present petition.

4. I have considered the contentions raised by learned counsel for the parties and perused the copy of the petition filed by the respondents under Section 125 Cr.P.C. (Annexure P-1); a copy of the reply tendered by the petitioner before the Family Court (Annexure P-3) and copies of the affidavits of assets, income and liabilities of both the parties, i.e. Annexures P-7 and P-8.

5. While granting the interim maintenance, the Family Court has ignored the affidavit of the petitioner-husband with the following reasons:-

“8.The analysis of the pleadings, as well as income affidavits etc. filed by the parties bring to the followings:-

- 1. The husband has admitted his income to ₹9,000/- per month with ₹5,000/- as expenses which seems to be improbable’*
- 2. The analysis of income affidavit of the husband shows that he is having Nokia mobile with a value of ₹1,000/-. On asking, as he was present in the Court, he showed his mobile which was OPP company with a good specification and on asking, he admitted that its price is about 15 to 17 thousand;*
- 3. He has mentioned in his affidavit that he is running a Chhota Hathi but on asking he could not tell the registration number of the said vehicle. This assumes significance in the light of the fact that the averments by the wife are that he is not driver of the Chhota Hathi he is working with his brother and is having several concerns including factories;*
- 4. It is also averred by the wife that the strained relationship is from 2006 and everything has been managed;*



5. *The perusal of the pleadings would show that para 13 of the written statement, the husband says that no concern in the name of Shree Namkeen exists but there is no reply with regard to existence of a concern namely Shree Bakery as alleged by the wife;*
6. *The husband has alleged that the wife is running a boutique and he showed a photograph but it does not show anything vide which it could be attached with the wife. The monthly expenditure shown by wife to be of ₹40,300/- per month seems to be exaggerated.”*

6. By making the aforesaid observations, the Family Court had believed the version of respondent No. 1-wife that the petitioner is working with his brother who is doing business and also having factories.

7. The relationship between the parties is admitted. The parties are yet to lead evidence and thereafter, the allegations and counter-allegations would be decided on merits. So far as the ownership of the four wheeler/Tempo ('Chota Hathi') is concerned, the petitioner has placed on record the copy of the registration certificate of the said vehicle as Annexure P-5.

8. At this stage, there is no documentary evidence on record that the petitioner is having a joint business with his brother who is running a shop and a factory situated at Khanna as alleged by the respondents in paragraph No. 16 of their petition (Annexure P-2). Only on the basis of presumptions, the petitioner cannot be treated as a co-sharer in the same business which is alleged to be the ownership by his brother. The petitioner has alleged his income as ₹9,000/- per month is Column No. 10, Part-I of his affidavit (Annexure P-7). There is no documentary proof at this stage, to



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prove such income of the petitioner to justify awarding of ₹15,000/- as interim maintenance.

9. Keeping in view the aforesaid facts and circumstances, the observations made by the Family Court regarding determination of the income of the petitioner are liable to be set aside.

10. In view the age of the petitioner and his qualification, he is presumed to earning about ₹18,000/- per month. As such awarding of ₹5,000/- per month to respondent No. 1-wife and ₹6,000/- per month to respondent No. 2 minor child is just and equitable. The impugned order is accordingly modified. The present petition is partly allowed.

11. However, it is made clear that the observations made by this Court in this order will not affect the decision of the main case on merits by the learned Family Court.

12. Pending miscellaneous application(s), if any, shall also stand disposed of.

September 09, 2024
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(HARPREET KAUR JEEWAN)
JUDGE
Whether Speaking Yes
Whether reportable No