
(2015) 11 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 1082 of 2013 and Criminal Misc. No. M-13303 of 2013

Archana Verma and Others

APPELLANT

Vs

Madhur Verma and Others

RESPONDENT

Date of Decision : 03-11-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 354, 354(6)

Penal Code, 1860 (IPC) — Section 323, 493, 500, 506

Protection of Women From Domestic Violence Act, 2005 — Section 12

Citation : (2015) 11 P&H CK 0012

Hon'ble Judges : Hari Pal Verma, J.

Bench : Single Bench

Advocate : S.S. Virk, Advocate, for the Appellant; Harkesh Manuja, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Hari Pal Verma, J.—This order shall dispose of above noted two petitions i.e. CRR No. 1082 of 2013 filed by Archana Verma (wife of respondent No. 1) and CRM-M-13303 of 2013 filed by Madhur Verma (husband of Archana Verma), as both the petitions have originated from common orders passed by the Courts below and common facts are involved in both the petitions. However, for the convenience of disposal of these petitions, Archana Verma, petitioner in CRR No. 1082 of 2013 shall be referred as "petitioner-wife" whereas Madhur Verma, petitioner in CRM-M-13303 of 2013 shall be referred as "respondent-husband" in this judgment.

2. Archana Verma, petitioner-wife, has questioned the legality and propriety of order dated 4.12.2012 passed by learned Additional Sessions Judge, Panipat, whereby learned lower Appellate Court has modified the order dated 19.4.2012 passed by the trial Court to the extent that the maintenance shall be payable from the date of order, rather than from the date of filing of the application,

whereas Madhur Verma, respondent-husband has sought quashing of order dated 19.4.2012 passed by the trial Court granting maintenance allowance @ Rs. 15,000/- per month to the petitioner-wife from the date of filing of the application as well as order dated 4.12.2012 passed by the lower Appellate Court.

3. Brief facts of the case are that marriage of Archana Verma was solemnized with Madhur Verma on 24.8.2009 as per Hindu rites and ceremonies at New Delhi. In her application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, "the Act"), she claimed that her parents spent about Rs. 20 lac in the said marriage. After the marriage, the behaviour of her husband and his other family members was not good and she was beaten and taunted by them many times for bringing insufficient dowry. They demanded additional dowry of Rs. 20 lac. It was further pleaded that before the marriage also, the husband had received valuable gifts and cash of Rs. 20,000/- and Rs. 50,000/- on several occasions from her on the promise of marriage. Since the husband refused to marry her, she lodged FIR No. 74 dated 16.7.2008 under Sections 323 , 493 , 500 and 506 IPC at Police Station DLF Phase-1, Gurgaon against him. However, in order to save his skin, he solemnized the marriage with the petitioner-wife on 24.8.2009. But after the marriage, the petitioner-wife was kept locked in a room and even on 29.9.2010, the respondent-husband had tried to throw her from 14th floor of the house in Gurgaon. Though the respondent-husband assured the parents of the petitioner-wife that they will not treat her with any kind of cruelty, but to no avail.

4. Upon notice, reply on behalf of the respondent-husband was filed, wherein the fact with regard to marriage between the parties was admitted, however, it was averred that no dowry articles were given by the parents of the petitioner-wife. Only some friends of the petitioner-wife and respondent-husband were present in the marriage ceremony, as the marriage was against the desires of parents of petitioner-wife. The petitioner-wife was never treated with cruelty, as alleged. The petitioner-wife was serving in Birla Sun Life Insurance Company at the time of marriage and she remained in service till she accompanied the respondent-husband. She was getting monthly salary of more than Rs. 20,000/-. It was further averred that the FIR in question was registered against him in order to put pressure upon him to get married with her. No dowry articles or cash was given to them.

5. Learned Chief Judicial Magistrate, Panipat, after appreciating the evidence on record and taking into account the financial position of the husband as well as the statutory duties of the husband, allowed the application for interim maintenance and directed the respondent-husband to pay an amount of Rs. 15,000/- per month from the date of filing of the application vide judgment dated 19.4.2012.

6. Aggrieved from the aforesaid order dated 19.4.2012, the respondent-husband preferred appeal before learned Additional Sessions Judge, Panipat, whereupon, learned lower Appellate Court dismissed the appeal, however, the order dated

19.4.2012 passed by the trial Court was modified to the extent that the interim maintenance, as fixed by the trial Court, shall be payable from the date of order, rather than the date of filing of the application.

7. It is against the aforesaid order dated 4.12.2012, the petitioner-wife has filed CRR No. 1082 of 2013, claiming maintenance from the date of application, whereas, on the other hand, the respondent-husband has also filed CRM-M-13303 of 2013 seeking quashing of order dated 19.4.2012 passed by the trial Court as well as order dated 4.12.2012 passed by the lower Appellate Court, allowing maintenance to the wife.

8. Learned counsel appearing on behalf of the petitioner-wife has contended that the lower Appellate Court has not appreciated the facts of the case in its true perspective and without assigning any cogent and justifiable reasons has modified a well reasoned order passed by the trial Court, denying the interim maintenance from the date of filing of the application. The tax computation produced by the petitioner-wife, showing gross salary of the respondent-husband at Rs. 13,63,280/- for the financial year 2007-08 has not been taken into account while considering the case of the petitioner-wife for grant of maintenance.

9. On the other hand, learned counsel appearing on behalf of the respondent-husband has submitted that both the Courts below have failed to take into consideration the fact that as the marriage between the parties had taken place at Delhi and thereafter, both the parties resided together at Gurgaon, therefore, the Courts at Panipat had got no territorial jurisdiction in the matter. Moreover, despite having recorded a finding that the petitioner-wife was educated and capable of earning handsome salary, this fact has not been taken into consideration while granting the maintenance by the Courts below. Thus, both the Courts below have erred while passing the impugned orders and failed to consider the earning capacity of respondent No. 1-husband while awarding interim maintenance.

10. I have heard learned counsel for the parties and perused the record.

11. So far as the claim of the petitioner-wife in the present revision petition i.e. CRR-1082-2013 is concerned, she has confined her claim for maintenance from the date of filing of the application under Section 12 of the Act instead of the date of order, as passed by learned Additional Sessions Judge, whereas, the respondent-husband has filed the petition i.e. CRM-M-13303 of 2013 challenging quantum of maintenance. The respondent-husband has stated that since the petitioner-wife is capable of earning, therefore, she is not entitled for maintenance and even if she is entitled for maintenance, the maintenance awarded by the Courts below is on higher side. Therefore, the maintenance awarded by the Courts below be reduced.

12. It is not in dispute that the parties are married with each other and as on date, the petitioner-wife is residing separately. The petitioner-wife was stated to

be working, but as per the photocopy of the resignation letter dated 11.4.2011, produced by the petitioner-wife, she has resigned from Aegon Religare Life Insurance Company and there is no other evidence to show that the petitioner-wife is serving and drawing salary. Thus, she has no source of income. But on the other hand, as per the tax computation produced by the petitioner-wife, the salary of the respondent-husband has been shown at Rs. 13,63,280/- for the financial year 2007-08. Therefore, this Court finds that the petitioner-wife is certainly entitled for maintenance, as claimed and there is no illegality while granting maintenance to her. The Courts below have granted maintenance vis-à-vis the status of the respondent-husband. Thus, the plea of the respondent-husband that the maintenance granted to the petitioner-wife is on higher side, cannot be accepted. The petitioner-wife is required to maintain the same status had she otherwise maintained if not residing separately. The amount of Rs. 15,000/-, as maintenance, therefore, cannot be said to be on higher side.

13. As regards the plea of the petitioner-wife that learned Additional Sessions Judge has wrongly denied her the claim of maintenance from the date of application, the controversy has been set at rest by Hon'ble the Apex Court in the case of Bhuwan Mohan Singh Vs. Meena, wherein while considering the case for grant of maintenance under Section 125 CrPC, it was held that the wife is entitled in law to lead a life in similar manner as she would have lived in the house of her husband. To deal with the question with regard to grant of maintenance from the date of order or from the date of application, the Hon'ble Apex Court held as under:--

"15. While dealing with the relevant date of grant of maintenance, in Shail Kumari Devi and Another Vs. Krishan Bhagwan Pathak @ Kishun B. Pathak, , the Court referred to the Code of Criminal Procedure (Amendment) Act, 2001 (Act 50 of 2001) and came to hold that even after the amendment of 2001, an order for payment of maintenance can be paid by a court either from the date of order or when express order is made to pay maintenance from the date of application, then the amount of maintenance may be paid from that date, i.e., from the date of application. The Court referred to the decision in Krishna Jain Vs. Dharam Raj Jain, wherein it has been stated that to hold that, normally maintenance should be made payable from the date of the order and not from the date of the application unless such order is backed by reasons would amount to inserting something more in the sub-section which the legislature never intended. The High Court had observed that it was unable to read in sub-section (2) laying down any rule to award maintenance from the date of the order or that the grant from the date of the application is an exception. The High Court had also opined that whether maintenance is granted from the date of the order or from the date of application, the Court is required to record reasons as required under subsection (6) of Section 354 of the Code. After referring to the decision in Krishna Jain (supra), the Court adverted to the decision of the High Court of Andhra Pradesh in K. Sivaram Vs. K. Mangalamba and Others, , wherein it has been ruled that the maintenance would be awarded from the date

of the order and such maintenance could be granted from the date of the application only by recording special reasons. The view of the learned single Judge of the High Court of Andhra Pradesh stating that it is a normal rule that the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance was not accepted by this Court. Eventually, the Court ruled thus: -

"43. We, therefore, hold that while deciding an application under Section 125 of the Code, a Magistrate is required to record reasons for granting or refusing to grant maintenance to wives, children or parents. Such maintenance can be awarded from the date of the order, or, if so ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary. No special reasons, however, are required to be recorded by the court. In our judgment, no such requirement can be read in sub-section (1) of Section 125 of the Code in absence of express provision to that effect."

14. Similarly, in the case of Jaiminiben Hirenghai Vyas Vs. Hirenghai Rameshchandra Vyas, , Hon''ble the Apex Court has held that the Court has discretion to grant maintenance either from the date of application or from the date of order, but while granting such maintenance, the Courts are required to record reasons in support of the order so passed. The relevant observations of the Hon''ble Apex Court in the said case read as under:--

"7. Section 125 of the Cr.P.C, therefore, impliedly requires the Court to consider making the order for maintenance effective from either of the two dates, having regard to the relevant facts. For good reason, evident from its order, the Court may choose either date. It is neither appropriate nor desirable that a Court simply states that maintenance should be paid from either the date of the order or the date of the application in matters of maintenance. Thus, as per Section 354(6) of the Cr.P.C, the Court should record reasons in support of the order passed by it, in both eventualities. The purpose of the provision is to prevent vagrancy and destitution in society and the Court must apply its mind to the options having regard to the facts of the particular case."

15. Having regard to the aforesaid judgments in the cases of Bhuwan Mohan Singh v. Meena & ors. (supra) and Jaiminiben Hirenghai Vyas and another v. Hirenghai Rameshchandra Vyas and another (supra), this Court finds that the petitioners-wife deserves to be granted maintenance from the date of application, as admittedly, she has resigned from Aegon Religare Life Insurance Company where she was working and furthermore, while taking into consideration the income of the respondent-husband, which was at Rs. 13,63,280/- for the financial year 2007-08, as per the tax computation produced by the petitioner-wife, the maintenance of Rs. 15,000/- is certainly not on higher side, as in today scenario, for the family like the petitioner-wife, it is too difficult to survive with such amount. Therefore, this Court has no hesitation to uphold the order of the Chief Judicial Magistrate dated 19.4.2012, granting maintenance

to the petitioner-wife from the date of filing of application. The order dated 4.12.2012 passed by learned Additional Sessions Judge, Panipat, to the extent that the maintenance shall be payable from the date of order, is set aside. The petitioner-wife shall be entitled to the relief w.e.f. the date of application, as mentioned above.

16. Accordingly, the revision petition (CRR-1082 of 2013), filed by the wife, is allowed, as mentioned above, whereas, the petition (CRM-M-13303 of 2013) filed by the husband, is dismissed.

17. A photocopy of this order be placed on the file of other connected case.