
(2013) 08 P&H CK 0059

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M-412 of 2011 (O and M)

Moumita Khan

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 27-08-2013

Acts Referred:

Citation : (2014) 2 Crimes 356 : (2014) 2 DMC 208

Hon'ble Judges : Rekha Mittal, J

Bench : Single Bench

Advocate : Sanjeev Kumar Panwar, for the Appellant; Shekhar Mudgal, Asstt. Advocate General, for the Respondent

Final Decision : Disposed Off

Judgement

Rekha Mittal, J.—The present petition lays challenge to orders dated 10.9.2009 and 2.12.2010 passed by the Judicial Magistrate 1st Class, Faridabad and the Additional Sessions Judge, Faridabad, respectively, whereby the petitioner has been allowed maintenance at the rate of Rs. 15,000/- per month and the Court of Additional Sessions Judge declined the prayer to enhance the amount. The facts relevant for disposal of the present petition are that the petitioner was married with respondent No. 2 on 19.4.1998 and a male child was born out of this wedlock on 7.8.1999. The respondent is an Engineer working in NHPC Limited. The respondent-husband has failed to discharge his liability to provide maintenance to the petitioner and the minor child living with her. In the year 2004, the respondent purchased two bed rooms flat bearing No. 501-A, Aravali Heights, Sector 21-C Part-III, Faridabad, in which the petitioner is residing with her son.

2. The petition filed u/s 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the Act") was allowed by the Court of Judicial Magistrate 1st Class, Faridabad and the petitioner was awarded a monthly sum of Rs. 15,000/- for herself and minor son of the parties. The revision petition preferred by the petitioner for enhancement of the amount to a

sum of Rs. 25,000/- was dismissed by the Court of Additional Sessions Judge, Faridabad.

3. To express her grievance that the amount awarded in her favour is inadequate, the present petition has been filed.

4. Counsel for the petitioner submits that the respondent-husband is drawing salary more than Rs. 60,000/- per month, as per copy of salary ledger for the financial years 2009-10 and 2010-11 (Annexure P-8). It is argued that from August 2010 onwards, his salary has increased substantially which varies from Rs. 70,000/- Rs. 90,000/-. It is further submitted that keeping in view emoluments of the respondent, the trial Court has not awarded maintenance according to entitlement and the re-visional Court failed to correctly and properly appreciate the income of the respondent and the amount required by the petitioner, in view of sky rocketing prices of daily necessities of life, the status which the petitioner is entitled to enjoy and the amount required to provide proper upkeep, maintenance and education to the child whose needs are increasing as he is a teenager.

5. Counsel for the respondent, on the contrary, argues that the trial Court has awarded maintenance, taking into consideration salary of the respondent at the rate of Rs. 60,000/-. It is submitted that the respondent has a liability to pay EMI in regard to the flat in which the petitioner, is residing at Faridabad. According to counsel, statutory deductions towards income tax etc., are made from his salary, therefore, there is no error or illegality in the orders impugned.

6. I have heard counsel for the parties and perused the record.

7. The sole question for consideration is "whether the maintenance awarded by the Judicial Magistrate is liable to be enhanced?"

8. The petitioner has been allowed maintenance at the rate of Rs. 15,000/- per month for herself and the minor son. She is staying in the residential accommodation provided by her husband. The petitioner has prayed for enhancement to the tune of Rs. 25,000/- per month.

9. The petitioner has placed on record Annexure P-8, a document in regard to salary of the respondent-husband from April 2009 to March 2011. Counsel for the respondent has not filed any counter to challenge correctness of the document. A perusal of Annexure P-8 reveals that salary of the respondent-husband has increased substantially from August 2010 onwards. His salary is Rs. 71,773 in August 2010. In the document, there is no reference to any deductions. On the contrary, in certain months, the respondent has been paid huge sum Rs. In the month of December 2010, a total sum of Rs. 4,14,051/- has been paid to the respondent including arrears, raising an inference that his salary was revised at higher rate retrospectively. The respondent has no other liability except to maintain his family consisting of his wife and minor child. He is paying instalments to the tune of Rs. 10,000/- per month in regard to re-payment of

loan raised for purchasing a flat. Taking into account the liability of the respondent to pay Rs. 10,000/- towards EMI of the flat, however, keeping in view the salary of the respondent which is further increasing from April 2009 onwards and has been raised to Rs. 99,057/- in January 2011, I am of the considered opinion that the maintenance assessed by the trial Court is liable to be enhanced. The prices of daily necessities are increasing day by day. The petitioner and the minor child are entitled to enjoy the same amenities of life as they would have, had they been staying with the respondent. The age of the child is 14 years. The mother has to provide for his education, upkeep and maintenance so that he does not suffer in his development owing to paucity of funds nor he develops any complex in his peer group.

10. Keeping in view the totality of the facts and circumstances, the maintenance awarded to the petitioner by the trial court, affirmed in revision, is enhanced to the tune of Rs. 20,000/- per month from the date of application u/s 12 of the Protection of Women from Domestic Violence Act, 2005. Disposed of accordingly.