

(2010) 10 P&H CK 0285

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Balwant Singh Joga

APPELLANT

Vs

Gurmail Kaur

RESPONDENT

Date of Decision: Oct. 7, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 482

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Mehinder Singh Sullar, J.

The crux of the facts, relevant for deciding the core controversy involved in the instant petition and emanating from the record, is that in the wake of petition u/s 125 Cr.PC filed by respondent Gurmail Kaur against her husband -petitioner Balwant Singh, the trial Magistrate awarded Rs. 5000/- per month as ad interim maintenance, by virtue of impugned order dated 23.7.2007 (Annexure P7).

2. Aggrieved by the order of the trial Magistrate, the petitioner husband filed a revision petition, which was dismissed as well by the revisional Court, vide impugned order dated 9.9.2008 (Annexure P8).

3. The petitioner still did not feel satisfied and filed the second revision petition, in the garb of instant petition for quashing the impugned orders (Annexures P7 and P8) invoking the provisions of Section 482 Cr.PC. That is how I am seized of the matter.

4. Having heard the learned Counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the present petition.

5. Ex facie, the argument of the learned Counsel for the petitioner that since the Courts below have awarded the excessive amount of ad interim maintenance, so,

the impugned orders are liable to be set aside, is not only devoid of merit but misplaced as well.

6. As is evident from the record that the respondent-wife claimed that the petitioner-husband is employed with Pepsu Road Transport at a monthly carry home salary of Rs. 16,000/-. The factum of employment is not denied by him. So, taking into consideration the salary of the husband, the trial Magistrate fixed the ad interim maintenance at the rate of Rs. 5000/- per month in this context.

7. Not only that, the revision filed by the petitioner-husband was also dismissed by the revisional Court, vide impugned order (Annexure P8), the operative part of which is as under:

Admittedly the respondent is legally wedded wife of the revisionist. Though of course an exparte divorce has already been taken by the revisionist but even the divorced wife is entitled to the maintenance. The contention of the revisionist is that respondent took the amount from the sale proceed of the house and GPF and she is residing with her son and as such she is not entitled to any maintenance allowance. From the pleadings of the parties taken in the lower court it is revealed that said house was in the name of the respondent though of course the revisionist says that it was purchased by him out of his earnings. This thing can only be proved as and when evidence is produced by both the parties. When admittedly the revisionist is drawing salary of Rs. 14,500/- per month, so order of interim maintenance of Rs. 5000/- per month cannot be said to be higher on any point of view in now a days of high prices. So far as the question of income tax is concerned, if the revisionist pays the tax on the amount of Rs. 14,500/- of salary being drawn by him per month then the amount comes to around Rs. 2500/- per year as income tax. In these circumstances, the revision petition is without any merits and the same is hereby dismissed. Parties through their counsel are directed to appear in the lower court on. Lower court file be returned and revisional file be consigned to the record room.

8. Meaning thereby, the Courts below have recorded the valid reasons in awarding the ad interim maintenance and correctly negated the claim of the petitioner-husband in this respect, vide impugned orders (Annexures P7 and P8). Such well-articulated orders containing the valid reasons, cannot possibly be interfered with in the second revision (which is otherwise barred), in the garb of petition u/s 482 Cr.PC, unless the same are perverse and without jurisdiction. No such patent illegality or legal infirmity has been pointed out in the impugned orders by the learned Counsel for the petitioner.

9. No other legal point, worth consideration, has either been urged or pressed by the learned Counsel for the parties.

10. In the light of the aforesaid reasons, as there is no merit, therefore, the instant petition is hereby dismissed in the obtaining circumstances of the case.