

(2014) 07 P&H CK 0847

High Court Of Punjab And Haryana At Chandigarh

Case No: CRM-M-39759-2012

Kirna Devi

APPELLANT

Vs

Surinder Kumar
Kansal

RESPONDENT

Date of Decision: July 28, 2014

Acts Referred:

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

Hon'ble Judges: Rekha Mittal, J

Bench: Single Bench

Advocate: Ashish Grover, Advocate for the Appellant; Naveen Sharma, Advocate for the Respondent

Final Decision: Allowed

Judgement

Rekha Mittal, J.

The present petition u/s 482 of the Code of Criminal Procedure (in short "the Cr.P.C.") lays challenge to orders dated 23.04.2011 (Annexure P2) and dated 06.09.2012 (Annexure P3) passed by the Chief Judicial Magistrate, Bathinda and Additional Sessions Judge (Adhoc), Fast Track Court, Bathinda respectively whereby the application filed by the petitioner for grant of maintenance allowance u/s 125 Cr.P.C. qua her has been dismissed by the trial Court and the revision petition has been dismissed by the Additional Sessions Judge.

2. Kirna Devi (wife), Pooja and Parmod (minors) through their next friend and natural guardian Kirna Devi filed an application for grant of maintenance to the applicants @ Rs. 10000/- per month to applicant No. 1 and Rs. 5000/- each to applicants No. 2 & 3 with the allegations that the respondent has refused and neglected to maintain his wife and minor children. It is further averred that the respondent is working as SDO with WAPCOS (India) Limited and earning Rs. 40,000/- per month.

3. The learned trial Court after adducing evidence by the parties in support of their respective claims rejected the claim of the petitioner for grant of maintenance but the minor applicants were awarded allowance @ Rs. 7000/- per month each from the date of the application.

4. Surinder Kumar Kansal (respondent) filed an appeal against the order dated 23.04.2011 in regard to grant of allowance in favour of the minor children whereas the petitioner preferred a revision petition challenging the order dated 23.04.2011 to the extent of rejecting her claim for award of maintenance. Both the cases were simultaneously heard and disposed of by the Additional Sessions Judge, Bathinda vide order dated 06.09.2012 and the findings recorded by the trial Court on both the counts were affirmed.

5. Feeling dissatisfied by the orders passed by the Courts below holding the petitioner being not entitled to get maintenance allowance from her husband, the present petition has been preferred by Kirna Devi.

6. Counsel for the petitioner contends that the trial Court as well as revisional Court grossly erred and committed a serious illegality in discarding claim of the petitioner to get maintenance allowance from her husband. It is further submitted that there is nothing on record to suggest that the petitioner ever undertaken any job or vocation which could secure income for her. The petitioner along with minor children of the parties had been staying in her parental home and they were being maintained by her father, who later retired from service. It is further submitted that the mere fact that the petitioner did not file an application for maintenance for a period of about 9 years in between 1998 to 2007 cannot form the basis for denying her right to get maintenance from her husband who owes legal, social and moral obligation to maintain his wife and children.

7. Counsel for the respondent, on the other hand, contends that there is no error or infirmity in the impugned orders. The petitioner is highly educated as she is B.A. B.Ed. and her silence for a period of about 10 years to claim maintenance raises an adverse inference against her claim that she did not have any source of income to maintain herself and the minors.

8. I have heard counsel for the parties and perused the records.

9. There is no dispute that the petitioner earlier filed an application for grant of maintenance which was later withdrawn in view of compromise dated 13.12.1997 and in pursuance thereof, the petitioner and the daughter of the parties accompanied the respondent to the place of his posting. The petitioner stayed with her husband upto 13.05.1998 and since then the parties are staying separately.

10. The learned trial Court non-suited the petitioner for the following reasons:-

"The applicant No. 1 did not cohabit with the respondent for about 9 years and never moved application seeking maintenance or alleging any neglect at the hands

of the respondent. Admittedly, she is an educated lady having degree of B.A. B.Ed. She has been maintaining herself for 9 years till filing of the present application. It cannot be believed that respondent has refused or neglected to maintain her since the date of her marriage i.e. 06.05.1993. After going through the facts and circumstances of this case as well as evidence placed on record, I am of the opinion that applicant No. 1 is not entitled to grant of maintenance allowance as her evidence does not prove that she is unable to maintain herself or that the respondent has refused or neglected to maintain her."

11. The revisional Court put its seal on the findings recorded by the trial Court even after noticing various judgments referred to in para 17 to 22 of the order wherein it has been consistently held by the different High Courts that maintenance cannot be refused to a wife on the ground that she is highly educated and can maintain herself. A relevant extract from the observations made by the revisional Court reads as follows:-

"In the instant case, it is established on record that after effecting compromise in Lok Adalat, at Mansa, respondent Surinder Kumar purchased Kissan Vikas Pattras, in their joint name and she remained in the house of respondent upto April 09, 1998 and thereafter, never resided with him. She is having B.A.B.Ed. Degree. The applicant has failed to prove that the respondent has neglected and refused to maintain or deserted her, rather evidence produced on record reveals that she herself left the company of the respondent and is not ready to join company on any conditional circumstances."

12. Kirna Devi petitioner appeared in the witness box and stated that the respondent left her company, deserted her and the children and refused to keep and maintain them. Counsel for the respondent has failed to point out any evidence on record to support the findings of the revisional Court that the petitioner voluntarily left company of the husband when admittedly the respondent did not appear in the witness box to counter the case of the petitioner. The petitioner agreed to join the company of her husband in view of compromise effected in December 1997. She stayed with her husband upto mid May, 1998. There is nothing on record suggestive of the fact that if the petitioner was comfortable during stay with her husband, she had a good reason to leave the company of the husband along with two minor children. The respondent admittedly did not appear in the witness box to controvert the case of the petitioner and to corroborate the version, if any, raised in his reply. It is none of the plea of the respondent that during separate stay of the parties, the respondent ever sent any money for the maintenance of his wife and children. It is beyond comprehension as to on what basis, the Courts have held that the respondent has not neglected and refused to maintain the petitioner. The mere fact that the petitioner is an educated lady having qualification of B.A.B.Ed. is not sufficient to deny her maintenance. There is no evidence on record that the petitioner was ever involved in any work which could be

a source of income for her maintenance. The petitioner was admittedly residing with her parental family since her separation in May 1998 onwards. Both the Courts have not said anything if any explanation was sought from the petitioner qua her failure to seek maintenance from the year 1998 till filing of the petition in the year 2007. In this view of the matter, I find myself unable to confirm the findings recorded by the Courts below denying award of maintenance allowance to the petitioner.

13. The question now arises as to what amount of maintenance is to be awarded to the petitioner. There is evidence on record that the respondent was getting gross salary of more than Rs. 36,000/- in the year 2010 and his carry home salary was more than Rs. 32,000/-. The orders passed by the Courts below do not indicate a clear picture about the nature of deduction made from his salary. However, keeping in view the salary being drawn by the respondent coupled with the prices of daily necessities of life, ends of justice may be served if the petitioner is allowed maintenance @ Rs. 7000/- per month.

14. For the reasons recorded above, the petition is allowed in the aforesaid terms.

15. Before parting with this order, it is appropriate to mention that the respondent has not discharged his obligation to pay the arrears of maintenance to the minor children. The petitioner had to file an application for execution wherein salary of the respondent to the extent of 1/3rd is stated to be attached but no remittance of the attached amount is statedly made till date. The conduct of the respondent is disapproved as he is trying to avoid his duty to maintain even his minor children.