

In the Court of Sudhir Parmar (UID No. HR-0157),
Additional Principal Judge, Additional Family Court, Gurugram

Computer IS No. MNT125/295/2015.
CNR No. HRGR01-010282-2015.
Instt No. RBT-193 of 2015/2017.
Date of Instt: 16.09.2015/03.11.2017.
Date of Order: 23.01.2019.

1. Mrs. Manjeet @ Poonam (aged about 38 years) wife of Sh. Ved Parkash,
2. Bhupen Gupta (aged about 9 years) son of Sh. Ved Parkash,
3. Bhupesh Gupta (aged about 9 years) son of Sh. Ved Parkash (minors through her mother and natural guardian Mrs. Manjeet @ Poonam) all resident of House No.675/12, Gali No.13, Shivaji Park, Gurugram (Haryana).

...Petitioners

Versus

Shri Ved Parkash (aged about 40 years) son of Sh. Samay Singh, resident of House No.8714, Gali No.01, Hira Nagar, Gurugram (Haryana).

...Respondent

PETITION U/S 125 Cr.P.C. FOR GRANT OF MAINTENANCE

Present: Ms. Asha Barak Advocate, counsel for petitioner.
Sh. Deepak Gupta Advocate, counsel for respondent.

Order:

This order of mine shall dispose of an application filed u/s 125 CrPC seeking of Rs.40,000/- per month for the maintenance of petitioner and education of two small school going children.

2. Brief facts of the application are that marriage of petitioner No.1 was solemnized with respondent according to Hindu rites and ceremonies on 21.02.2002 at Gurugram. In the said marriage, an amount of Rs.10,00,000/- was spent by petitioner No.1's family. Out of the said wedlock petitioner No.2 & 3 were born who are now school going children. After the marriage, husband and mother in law of the petitioner that you have not brought the dowry articles according to their standard. The husband and mother in law of petitioner further directed her to visit your parental house and bring a sum of Rs.2,00,000/- in cash and one car. They further directed the petitioner that

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until otherwise she will not be allowed to live at her matrimonial house. Respondent and his mother beating her mercilessly and gave fist and leg blows, they also beaten her with dandas and kept her closed in one of the rooms and had not given sufficient food for several days. It is further averred that petitioner No.1 has no no source of income for maintaining herself as well as petitioner No.2 & 3 who are school going children. On the other hand, respondent is working in one of the private company namely JBM having B.Tech qualifications and working as Sr. Engineer and earning Rs.80,000/- per month plus other benefits. It is further averred that respondent has no other responsibility except to maintain the petitioners. The respondent is also living in adultery. The respondent jointly and severally thrown out the petitioner from her matrimonial house in three wearing clothes and directed the petitioner to come back only if she will bring the aforesaid requisite cash and car. It is further averred that several panchayats were held by the petitioners' side for reconciliation of the marriage but he flatly refused to bring back petitioners. Hence, this petition.

3. In order to rebut the case of petitioner, respondent filed written statement and denied all the allegations mentioned in the petition. It is submitted that petitioners are residing with respondent along with children in a rented accommodation and all the expenses are being born by the respondent and the alleged petitioner is false and frivolous. It is further averred that the present petition is a counter blast of the FIR having No.605 dated 22.10.2012.

ATTESTED U/s 232, 452 & 325 IPC in which the petitioner was arrayed as an additional
2 accused by way of summoning order U/s 319 Cr.P.C. It is further averred that
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petitioner is a quarrelsome lady and from the beginning of the marriage she is

31/11

harassing the respondent and his mother, she used to fight and abuse the mother of the respondent on petty matter, the respondent had fed up with dispute and tried to make the petitioner understand number of times but she was not ready to understand. Petitioner No.1 threatened many times to kill the mother of the respondent due to same, respondent's mother shifted to a rented house but now only petitioners and respondent are living in the said house. It is further averred that respondent has been suffering from spine disc slip problems which is permanent in nature, the respondent has to take lots of precaution, the respondent has to spend lots of money on his treatment and also needs special care but the petitioner does not care her husband i.e. respondent. It is further averred that petitioner No.3 (Bhupesh) was admitted in a hospital and thereafter on 20.04.2016, he was discharged but the petitioner No.1 did not come to see her child which shows the heartless character of the petitioner No.1 towards her child. It is further averred that petitioner No.1 is a diploma holder of dress designing from ITI Nazafgarh and doing stitching job at home and earns around Rs.30000/- per month. Dismissal of the petition has been sought for.

4. Petitioner in order to prove her case, she examined herself as PW1 and tendered her affidavit Ex.PW1/A in her examination-in-chief. Thereafter Id. Counsel for petitioner vide her separate statement closed the petitioner's evidence on 23.01.2017.

5. In order to rebut the case of the petitioner, respondent examined himself as RW5 and tendered his affidavit Ex.RW5/A in his examination-in-chief. Respondent has also examined RW1 Cristy Officer Assistant, YWCA of Delhi, RW2 Surender Kumar, Office Incharge of Sh. S.N. Sideshwar, Sr. Sec.

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Public School, Gurugram, RW3 Shashi Bhusan, Criminal Ahlmad, RW4 Vinod Kumar Gupta Proprietor Friends Provisional Store, RW6 Surender Kumar Office incharge, Sh. S.N. Sideswar, Sr. Sec. Public School, Gurugram (witness examined twice as RW2 & RW6). Respondent has also tendered the following documents :-

i. Ex.R1 & Ex.R2 : Photo-copy of diploma and attendance register.

ii. Ex.R3 : Authorization letter.

iii. Ex.R4 & Ex.R5 : Fee receipts.

iv. Ex.R6 to Ex.R9 : Photo-copies of registers.

v. Ex.R10 & Ex.R11 : Authorization letter.

vi. Ex.R12 & Ex.R13 : Certified copies of an FIR No.605 dated

22.10.2012, P.S. Gurugram City & of order dated

25.11.2014 passed by learned JMIC, Gurugram.

vii. Ex.R14 to Ex.R17 : Photo-copies of a diary.

viii. Ex.R18 : Photo-copy of a cheque bearing No.000053 dated

05.09.2017.

ix. Ex.R19 : Authorization letter.

x. Ex.R20 : Photo-copies of a diary.

xi. Ex.R21 to Ex.R25 : Photo-copies of applications dated 24.04.2017.

10.05.2017, 04.08.2017, 29.01.2018 & 10.02.2018.

xii. Ex.R26 : Photo-copy of PTM record.

xiii. Ex.R27 to Ex.R31 : Photo-copies of applications dated 29.01.2018,

25.10.2017, 04.08.2017, 21.04.2017 & 01.08.2017.

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Thereafter on 16.08.2018, Id. Counsel for respondent vide his

separate statement closed respondent's evidence.

6. I have heard the arguments of Id. Counsel for both the parties and perused the case file thoroughly.

7. Learned counsel for the petitioner argued that the marriage between the parties to the present petition was solemnized on 21.02.2002 at Gurugram according to Hindu Rites and Ceremonies and amount of more than Rs.10,00,000/- was spent on the said marriage. Handsome dowry articles were also given to the respondent and his family members. Out of the said wedlock twins were born who are aged 9 years and who are studying 4th in one of the reputed English medium Sideshwar School, Gurugram.

8. It is submitted by counsel for the petitioner immediately after the marriage the husband and mother-in-law of the petitioner started taunting and harassing the petitioner No.1 and she was being tortured on account of bringing less dowry. A demand of Rs.2,00,000/- along with a car was made by the respondent and his family members. When it was not fulfilled, the petitioner No.1 was beaten mercilessly by them. She was kept close in one of the rooms and was not given sufficient food for several days. The respondent working in one of the private company namely JBM and being senior engineer he is earning Rs.80,000/- per month plus other benefits. Not a single penny was ever given by the respondent to the petitioner and a panchayat was also convened but no amicable settlement was taken place.

9. It is further submitted by counsel for the petitioner that the respondent is living adultery and there is no probability or possibility to live together as husband and wife, she was thrown out from her matrimonial house

ATTESTED by the respondent without any cause and she being a household lady studied upto 10th class only and not in a position to earn her livelihood for herself. In

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8/12/18

last he prayed for allowing the present petition.

10. On the other hand, learned counsel for the respondent submitted that the present petition is nothing but a counter blast of FIR No.601 dated 22.10.2012 U/s 232, 452 & 325 IPC wherein the petitioner No.1 was arrayed as an additional accused by way of summoning U/s 319 Cr.P.C. It is the petitioner No.1 who is harassing respondent and his mother on one pretext or the other being quarrelsome lady. She also stated that she does not want see the face of is mother. It is submitted by counsel for the respondent that she has not deserted the company of the respondent rather she is residing in the same house along with along with petitioners No.2 & 3. No doubt the accommodation is a rented one and all the household expenses are borne by the respondent.

11. It is further submitted by counsel for the respondent that petitioner is a diploma holder of dress designing from ITI Nazafgarh and she is doing stitching job at home and she is earning approx. Rs.30,000/- per month. She was never harassed on account of bringing less dowry and it is specifically denied that the parents of the petitioner No.1 has spent more than Rs.10,00,000/- in the marriage of daughter and gave sufficient dowry articles. She was never gave fist and legs blows rather it is the petitioner No.1 who manhandled with the respondent and his mother on various occasions. She has not disclosed in her petition that as to when she was thrown out by the respondent and his mother from the house. Rest of the averments have been denied specifically. In last he prayed for dismissal of the present petition.

12. It is not under dispute that the petitioner is the legally wedded wife of respondent and petitioner No.2 & 3 are his twins who are studying in

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Sh. S.N. Sideshwar, Sr. Sec. Public School, Gurugram. It is also an admitted fact that petitioner No.1 was fixed U/s 232, 452 & 325 IPC in an FIR No.605 dated 22.10.2012. Now as per the case of the petitioner that she was deserted by the respondent from his company without any cause. After careful perusal of the petition, it is observed that it is nowhere mentioned by the petitioner as to when she was thrown out by her in-laws. No date, year and month has been mentioned in the petition and in para no.6, it is only mentioned that she was thrown out from her matrimonial house in three wearing clothes. On the other hand, it is the case of the respondent that she is still residing with the respondent along with petitioner No.2 & 3 and it is totally denied that she has been deserted by the respondent from her matrimonial house. It is further the case of the respondent that all the expenses of the studies of the petitioners No.2 & 3 are borne by the respondent and in this regard he has examined Sh. Surender Kumar Office Incharge of Sh. S.N. Sideshwar, Sr. Sec. Public School, Gurugram as RW2, who deposed that the school fee of both the petitioners No.2 & 3 have been regularly deposited by the respondent. He has also placed the fee receipts mentioned in the register of matric i.e. Ex.R6 to Ex.R9 which shows that the educational expenditures of petitioners No.2 & 3 have been borne by the respondent. The contention of the learned counsel for the respondent that respondent has been instrumental on purchasing of ration items of the smooth running of the house has also found favour of this Courts because from the testimony of RW4 Vinod Kumar Gupta proprietor Friends Provisional Store, it is observed that it is the petitioner who used to come to his shop for purchasing of ration items and all the payments have been given by the respondent. He has also proved this fact that the payment made through

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9/11/18

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cheque which was issued by the respondent.

13. After careful perusal of the para No.15 of the petition, it is observed that the petitioner has mentioned herself as an household lady and is not in a position to earn her livelihood whereas from the documents placed on case file, i.e. Ex.R1 certificate from YWCA of Delhi, it is found that petitioner No.1 has done her diploma in dress designing wherein she has obtained 73.07 per cent marks and her place was first division in order to merit. This certificate has been duly proved by the Cristy Officer Assistant, YWCA of Delhi who has stepped into the witness box as RW1. Now it is crystal and clear that petitioner No.1 has concealed the material facts from the court and she is duly maintaining herself by earning handsome amount. In case of **Monu Songra versus Pinki, Criminal Revision No. 2625 of 2014 (O&M) decided on 29.9.2016**, Hon'ble High court of Punjab and Haryana held that where wife was a Physiotherapist (Doctor) but she concealed this fact in the petition Interim maintenance was rightly refused by the trial court. It was observed that, Court will have to determine whether a qualified women who can get a job can sit idle and insist on maintenance. Everyone has to earn for himself or herself or at least make an effort and would not sit idle.

14. Further, In case law titled as **Sunita Kachwaha & Oꣳ Versus Anil Kuchwaha 2014 (Suppl.) page-1(Supreme Court)**, Hon'ble Apex court has held that, inability to maintain herself is the pre-condition for grant of maintenance to wife. Wife must positively aver and prove that she is unable to maintain herself in addition to the fact that her husband has sufficient means to maintain her and that he has neglected to maintain her. If husband's economic condition is quite good, wife

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Further in case titled as **S.Rehana Sulthana @ Rehana Begum**

versus B. Mohammad Ghouse & Anr. 2016 (2) Criminal Court Cases 651 (A.P.)

Hon'ble Andra Pradesh High Court has held that, failure of wife to prove that she left matrimonial home due to harassment meted out by husband or his family members, disentitles her to claim maintenance, as the establishment of ingredients of Section 125 Cr.P.C is sine qua non for grant of maintenance. Further that a **person who suppresses material facts is not entitled to claim maintenance under section 125 Cr.P.C.**

16. Since she has concealed this fact from the court, it can be presumed that she is earning sufficiently by doing the job. It was the duty of the petitioner not only to disclose the fact of doing a job, but also to disclose the income and if she left the job before filing of the petition, then the date of leaving the job. Once it is shown that she was doing a job at any point of time, the onus lies upon her to show when did she left the job, but no evidence to that effect has been led by the petitioner. She is thus guilty of suppression of material facts from the court. Therefore, the petitioner shall not be entitled to any maintenance from the respondent.

17. In view of the foregoing discussion, the petition fails and the same is **dismissed**. No costs. Memo of costs be prepared. File be consigned to record room after due compliance.

23rd January, 2019
Anant Kr. Mehta

(Sudhir Parmar)
Additional Principal Judge,
Family Court, Gurugram,
UID No.HR0157

Certified that this order of mine consists of 9 (*nine*) pages and all the pages have been signed by me.

(Sudhir Parmar)

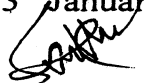
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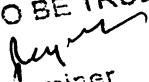
Memo Cost of Petition

	<u>Petitioner</u>	<u>Respondent</u>
1.Stamp for petition	10-00	00-00
2.Stamp for power	05-00	02-00
3.Process fee	50-00	-
4.Counsel fee	-	-
5.Misc. Expenses.	40-00	64-00
Total	₹105-00	66-00

Given under my hand and the seal of this court on 23rd January, 2019.


(Sudhir Parmar)
Additional Principal Judge,
Family Court, Gurugram
(UID No.HR0157)

Register No. 2635
Date of preparation of application 22.1.19
Record No. 6218
Date of Filing 22.1.19
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Copying Fees 33
Search Fees 33
Name of Copyist 33
Total Fees 33
Date of Delivery 33

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Authorised Under Section-76
of the Indian Evidence, Act-1979
31/1/19