

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Revision No. 223 of 2018.
Date of decision: July 04, 2018.

Smt. Ashmin KashmiriPetitioner.

Versus

Sh. Pushkar Kashmiri.Respondent.

Coram

The Hon'ble Mr. Justice Dharam Chand Chaudhary, *Judge.*
Whether approved for reporting?¹ No.

For the petitioner : Mr. Anand Sharma, Advocate.

For the respondent : Nemo.

Dharam Chand Chaudhary, J. (Oral)

Complaint herein is that learned Sessions Judge, Kangra at Dharamshala has allowed the appeal preferred by the respondent herein against the order dated 2nd May, 2017 passed by learned Chief Judicial Magistrate, Kangra at Dharamshala in Criminal Miscellaneous Application No. 33-IV/2017 filed in the main complaint Criminal Case No. 9-IV/2017 under the provisions of Protection of Women from Domestic Violence Act, whereby the maintenance to the complainant and the minor children @ ₹30,000/- per month was granted, illegally and without appreciating the facts and material available on record of the case in its right perspective.

¹ ***Whether the reporters of the local papers may be allowed to see the Judgment? yes.***

2. Admittedly, the parties are husband and wife. They have school going children also. The allegations of the wife-petitioner herein are that the respondent and his mother have treated her and also the minor children with cruelty. The children are studying in a public school which is very expensive not only from the point of view of the fee structure but also the books and other articles required by them to pursue their studies. The respondent-husband is a doctor and posted in Government Hospital, Chamba. His monthly income from salary is stated to be ₹1.5 lacs. Besides, a sum of ₹50,000/- he allegedly is earning by way of working in a clinic. He allegedly had undertaken to pay ₹30,000/- per month to the petitioner and her children for maintenance.

3. Learned trial Court taking note of such factual details in the application has disposed of the same with a direction to the respondent-husband to pay ₹30,000/- per month by way of interim maintenance allowance to the petitioner and her children, however, without recording any prima-facie finding qua the alleged instances of her maltreatment and her children by the respondent and his mother. Therefore, the appeal preferred by the respondent-husband has been allowed by learned Sessions Judge vide order under challenge in this petition with the observation that in a case of domestic violence in order to seek the relief of interim maintenance under Section 23 of the

Act, a prima-facie case qua maltreatment and existence of the instances of domestic violence is required to be made out. Learned Appellate Court thereby has not closed the right of the petitioner to claim interim maintenance for herself and also the children and rather remanded the application to learned trial Court for disposal after arriving at a conclusion and recording findings qua the instances of domestic violence, which of course shall be prima facie.

4. The impugned judgment, as such, cannot be said to be legally and factually unsustainable. The same is upheld, however, there shall be a direction to learned trial Court to decide the application at the earliest, preferably within two months from today.

5. Since the matter is stated to be listed before learned trial Court tomorrow on 6.7.2018, therefore, authenticated copy of this judgment be supplied to learned Counsel for the petitioner so that the same is produced in the court during the course of hearing.

6. The petition is accordingly disposed of, so also the pending application(s), if any.

**(Dharam Chand Chaudhary),
Judge.**

**July 04, 2018,
(vs)**