

CRR(F) No.746 of 2024 (O&M)
Date of Decision:21.08.2024

v/s

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

CRM No.23362 of 2024

For the reasons stated in the application and in the interest of justice, delay of 282 days in filing the present revision petition is condoned. The application stands allowed.

CRR (F) No.746 of 2024

1. The present revision petition has been preferred against the impugned order dated 11.05.2023 passed by the learned Family Court, Gurugram under Section 127 of the Cr.P.C. vide which the maintenance



awarded to respondent No.1-wife and respondent No.2-son has been enhanced to Rs.8000/- & Rs.5000/- per month respectively.

2. The marriage between the petitioner and respondent No.1 was solemnised on 21.06.2010 in accordance with Hindu rites and ceremonies. However, matrimonial dispute ensued between the couple and the respondents filed a petition under Section 125 Cr.P.C. seeking maintenance. The petitioner filed a reply and contested the claim made by the respondents. The learned Family Court, Gurugram vide order dated 20.01.2015 under Section 125 of the Cr.P.C. had directed the petitioner to pay maintenance of Rs.5000/- per month to respondent No.1-wife and Rs.3000/- per month to respondent No.2-son. However, vide order dated 11.05.2023, the learned Family Court, Gurugram in a petition preferred under Section 127 Cr.P.C. has enhanced the said amount qua respondent No.1-wife and respondent No.2-son to Rs.8000/- & Rs.5000/- per month respectively. Aggrieved by the same, the petitioner has approached this Court by filing the present petition.

3. Learned counsel for the petitioner *inter alia* contends that the enhanced amount of maintenance payable to the respondents is on the higher side. It is not in consonance with the actual income of the petitioner. The petitioner has been proceeded *ex parte* in the petition filed under Section 127 Cr.P.C. and therefore, he was not granted any opportunity to defend his case and his defence was struck off.

4. I have heard learned counsel for the petitioner and perused the paper book with his able assistance.

5. The object and purpose behind granting maintenance is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account



of failure of marriage. At the same time, a just and careful balance must be struck to ensure that this provision does not degenerate into a weapon to punish the other spouse. The Courts are required to conduct the maintenance proceedings while being alive to the legislative intent behind the provision under Section 125 Cr.P.C in its true spirit, which is to provide speedy assistance and social justice to women, children and infirm parents. The provisions of Section 125 Cr.P.C. were enacted as a measure to further social justice and protect dependent women, children and parents, which also fall within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India.

6. A three-Judge Bench of the Hon'ble Supreme Court in ***Vimala (K.) v. Veeraswamy (K.) (1991) 2 SCC 375***, speaking through Justice Fatima Beevi, opined that as follows:

“3. Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing, and shelter to the deserted wife.”

A two-Judge Bench of the Hon'ble Supreme Court in ***Kirtikant D. Vadodaria v. State of Gujarat (1996) 4 SCC 479***, speaking through Justice Faizan Uddin, opined as follows:

“15. ... While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation.”



7. Another objective the legislature has sought to achieve by this provision is to provide maintenance *pendente lite* to the applicant spouse during proceedings emerging out of matrimonial disputes so that the she/he can maintain herself/himself, have sufficient funds to pursue the litigation, and not suffer at the instance of the affluent spouse.

8. There is a general tendency on the part of the wife to amplify her needs and the husband to conceal his actual income, making it difficult to determine the earning capacity of the rival claimants with exactitude. The rival claimants must scrupulously bring on record their actual respective earning capacities in order for the Court to arrive at quantum of maintenance which is just and fair in terms of principle of equistatus. The quantum of maintenance must be justifiable and realistic to provide succour to the dependent spouse and also to avoid occurrence of the two extremes of the maintenance being either paltry or extravagant, ensuring that neither of the two is reduced to a life of penury. The adequacy of the maintenance allowance has to be determined by the yardstick of the dependent spouse being able to lead a life of reasonable comfort.

9. While dealing with the issue of maintenance *in extenso*, a two Judge bench of the Hon'ble Supreme Court in **Rajnesh v. Neha and another (2021) 2 SCC 324**, laid down the criteria for determining quantum of maintenance and issued the following directions:

VI Final Directions

130. In view of the foregoing discussion as contained in Part B -I to V of this judgment, we deem it appropriate to pass the following directions in exercise of our powers under Article 142 of the Constitution of India:

***(a) Issue of overlapping jurisdiction***

131. To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that:

- (i) where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or setoff, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding;*
- (ii) it is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding;*
- (iii) if the order passed in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding*

(b) Payment of Interim Maintenance

132. The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the concerned Family Court / District Court / Magistrates Court, as the case may be, throughout the country.

(c) Criteria for determining the quantum of maintenance

133. For determining the quantum of maintenance payable to an applicant, the Court shall take into account the criteria enumerated in Part B III of the judgment.

134. The aforesaid factors are however not exhaustive, and the concerned Court may exercise its discretion to consider any other factor/s which may be necessary or of relevance in the facts and circumstances of a case.

(d) Date from which maintenance is to be awarded

135. We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B-IV above.

(e) Enforcement/Execution of orders of maintenance

136. For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced

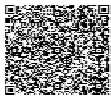


under Section 28A of the Hindu Marriage Act, 1956; Section 20(6) of the D.V. Act; and Section 128 of Cr.P.C may be applicable. The arder of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC more particularly Sections 51, 55, 58, 60 r.w. Order XXI."

10. In view of the above, this Court finds no force in the arguments advanced by learned counsel for the petitioner. The petitioner had appeared and thereafter, he abandoned the proceedings. Furthermore, non-payment of maintenance is one of the grounds on which defence of the petitioner can be struck off. A Division Bench of this Court in ***Mohinder Verma Vs. Sapna, 2014 (24) R.C.R (Civil) 380***, speaking through Justice Ajay Kumar Mittal, has observed as follows:-

"8...Where the spouse who is to pay maintenance fails to discharge the liability, the other spouse cannot be forced to adopt time consuming execution proceedings for realising the amount. Court cannot be a mute spectator watching flagrant disobedience of the interim orders passed by it showing its helplessness in its instant implementation. It would, thus, be appropriate even in the absence of any specific provision to that effect in the Act, to strike off the defence of the erring spouse in exercise of its inherent power under Section 151 of the Code of Civil Procedure read with Section 21 of the Act rather than to leave the aggrieved party to seek its enforcement through execution as execution is a long and arduous procedure. Needless to say, the remedy under Section 28A of the Act regarding execution of decree or interim order does not stand obliterated or extinguished by striking off the defence of the defaulting spouse. Thus, where the spouse who is directed to pay the maintenance and litigation expenses, the legal consequences for its non-payment are that the defence of the said spouse is liable to be struck off." (emphasis added)

11. A two Judge Bench of the Hon'ble Supreme Court in the case of ***Rajnesh Vs. Neha and another, (2021) 2 SCC 324*** has relied upon its judgment rendered in ***Kaushalya Vs. Mukesh Jain, (2020) 17 SCC 822*** to categorically hold that the Court may proceed to strike off the defence of the respondent if the errant spouse, in spite of being given a reasonable opportunity



to participate in the trial, appears to be unjustly prolonging it. Reliance in this regard can also be placed on the judgment of this Court in *Rani Vs. Parkash Singh, AIR 1996 P&H 175*.

12. The petitioner is an able bodied person and he has not disclosed his actual income. As such, the learned Family Court has assessed the maintenance on the basis of material available on record. A careful and just balance has been drawn, keeping in view the spiralling inflation rates and high cost of living corresponding to the reasonable needs of the respondents. Learned counsel for the petitioner has not been able to indicate any perversity in the impugned order which warrants interference by this Court. Accordingly, the present petition is dismissed being bereft of any merit.

August 21, 2024
Pankaj*

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No