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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Date of Decision: 08.07.2015

Satish Kumar

... Petitioner(s)

Versus

Kamaljit Kaur and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. Sandeep Arora, Advocate,
for the petitioner.

Paramjeet Singh, J.

Instant petition has been filed under Section 482 of the code of Criminal Procedure (in short, 'the Code') assailing the order dated 05.09.2014 passed by the Judicial Magistrate Ist Class, Jalandhar whereby respondent No.1-wife and respondent No.2-minor son were awarded interim maintenance of ₹5,000/- and ₹3,000/- per month, respectively, from the date of filing of application along with litigation expenses of ₹10,000/- and the order dated 21.01.2015 passed by the Additional Sessions Judge, Jalandhar whereby revision filed by the petitioner against the order dated 05.09.2014 has been dismissed.

Brief facts relevant for disposal of the present petition are to the effect that marriage between petitioner-husband and respondent

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No.1-wife was solemnized on 12.06.2006 at H.No.231/14, Labour Colony, Urban Estate, Phase-I, Jalandhar and a son-respondent No.2 was born from the said wedlock on 03.09.2007. The relations between the parties were not cordial as a result of which the respondents herein i.e. wife and minor son filed petition under Section 125 of the Code claiming maintenance from the petitioner-husband with the averments that the petitioner-husband has neglected to maintain them and treated respondent No.1-wife with cruelty and she was turned out of the matrimonial home by the petitioner-husband on 01.08.2007. Along with the petition under Section 125 of the Code, the respondents herein filed an application seeking interim maintenance from the petitioner-husband. Vide impugned order dated 05.09.2014, the Judicial Magistrate Ist Class, Jalandhar disposed of the said application awarding ₹5,000/- per month to respondent No.1-wife and ₹3,000/- per month to respondent No.2-minor son from the date of filing of application alongwith litigation expenses of ₹10,000/-. Feeling aggrieved, the petitioner-husband filed revision which was dismissed by learned Additional Sessions Judge, Jalandhar, vide impugned order dated 21.01.2015. Hence, this petition.

I have heard learned counsel for the petitioner and perused the record.

Learned counsel for the petitioner vehemently contended that respondent No.1-wife has not produced any documentary proof which could substantiate her averments with regard to income of the

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petitioner-husband. He further contended that there is no evidence on record with regard to her standard of living in the matrimonial home and also in her parental home. Both the courts below have erred while passing the impugned orders and failed to consider the earning capacity of respondent No.1-husband while awarding interim maintenance.

I have considered the contentions of learned counsel for the petitioner.

Both the courts below have considered the *prima facie* averments brought on record. It is admitted fact that the petitioner married respondent No.1 and from the said wedlock, respondent No.2-minor son was born. The concept of maintenance in India is covered under Section 125 of the Code as well as under personal laws. The maintenance includes entitlement to food, clothing and shelter to the wife, children and parents. This is provided as a measure of social justice and natural duty of a husband to maintain his wife and children when they are unable to maintain themselves. The object behind this provision is to prevent vagrancy by compelling the husband to pay maintenance to the wife and children who are unable to support themselves. Although, there is no specific provision in the Code with regard to interim maintenance, however, the Hon'ble Apex Court and various High Courts in catena of judgments have held that since finalization of maintenance petition takes time, interim maintenance can be awarded by the Court as an interim measure.

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In **Gaurav Sondhi v. Diya Sondhi** 120 (2005) DLT 426, the Hon'ble Delhi High Court has laid down the following guidelines while granting interim maintenance:

“4. The matrimonial courts should follow the following procedure while granting interim maintenance:

(i) Whenever maintenance/interim maintenance is ordered, the Court will direct that it will be paid on or before 10th day of every month unless the Court finds that the nature of the employment of the husband and his manner of income makes such monthly payments impractical. In such a situation appropriate orders may be passed which shall take into account the circumstances of the husband which warrant departure from the time bound monthly payment directions contained in this order.

(ii) Whenever the wife has a bank account and indicates it, such payment may directly be deposited in such bank account every month before the 10th day of the month.

(iii) The payment shall be made to the wife/child and in case of any difficulty in receiving or tendering the payment, it should be made through counsel. The order of deposit in Court needlessly makes it difficult for the wife to withdraw sums from the registry of the concerned court, apart from adding unnecessarily to the burden of the Court's registry. If for good reasons upon finding difficulty in payment to a wife and her Counsel the deposits in Court are made such deposits should be in the name of the wife by a draft/crossed cheques, which may be retained on the court file for retrieval by the wife without the time consuming process of deposit in the Court account and subsequent withdrawal by the recipient.

(iv) In case there is first default for payment of maintenance, the Court may condone it. However, in case of second default without justification, it will be open to the Court to impose a penalty up to 25% of the amount of monthly maintenance awarded.

(v) In case there is third or fourth default, the penalty may go up to 50% of the monthly amount of maintenance upon the court finding that the default was not condonable or contumacious in nature.

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(vi) *The Court must ensure that the orders of maintenance are not a mere rhetoric and are meaningful and effective and give real sustenance and support to the destitute wife and/or the child.*

(vii) *In case interim maintenance is being paid and adequate litigation expenses have been awarded to the wife, it should be ensured that the written statement/reply is filed within a reasonable time.*

(viii) *However, in judging the nature of default the relative affluence of the husband and the regular nature of his occupation and income will be taken into account. Obviously husbands having irregular employment and/or daily wages or those having casual employment would be entitled to have their defaults viewed more liberally.”*

In ***Rajeev Preenja vs. Sarika and others*** 159 (2009) DLT

616, the Hon'ble Delhi High Court has held as under:

“19. *Keeping in view the fact that interim maintenance applications are likely to take a year for being disposed of and that the payment to the wife is likely to be made only thereafter, it is only just and fair that the revisional court should insist on the deposit in Court of the interim maintenance payable in terms of the order under challenge as a pre condition to entertaining the revision petition. Otherwise a recalcitrant husband can, despite suffering an adverse order, defeat that order merely by filing a revision petition and not being burdened with the responsibility of complying with it.”*

Admittedly, in the present case, conduct of the petitioner-husband deserves to be deprecated. It has been observed by the trial Court that case was fixed eight times for consideration on the application for interim maintenance, but counsel for the petitioner-husband did not turn up, rather the Court was compelled to pass the order in his absentia.

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It has been held by the trial Court that the petitioner-husband intentionally avoided to argue on the application for grant of interim maintenance. The trial Court has considered the fact that the petitioner-husband is doing the business of sports, earning ₹1 lac per month by sports goods business at 231, Dilbagh Nagar, Jalandhar and is fully capable to maintain the respondents herein. Since version of the respondents herein remained un rebutted, the trial Court has awarded the aforesaid interim maintenance. It is the bounden duty of the petitioner-husband, who is an able-bodied man, capable of earning and has sufficient means, to maintain his wife and children.

Once the respondent-wife has made a specific averment with regard to capacity of the petitioner, then onus shifts upon the petitioner-husband to prove that he does not have sufficient means to provide maintenance. The petitioner has not brought on record income-tax returns and has not rebutted the averments and this is a case of bare denial. The contention of learned counsel for the petitioner is that respondent No.1-wife is able to maintain herself and she is not entitled to maintenance. It is only if wife is unable to maintain herself, then maintenance can be provided. The said contention is not sustainable, as an estranged wife and minor child cannot be reduced to destitute before deciding a main petition seeking maintenance for herself and her child. In the present case, categorical averments have been made in the application moved before the trial Court, but the petitioner-husband even

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did not bother to argue the case despite eight opportunities provided by the Court before awarding interim maintenance. As an interim measure, interim maintenance has been awarded and if the Court comes to the finding that income of the petitioner-husband was lesser, the same can be adjusted towards final maintenance that may be awarded. There is no evidence on record that respondent No.1-wife has any independent source of income.

In any event, I am of the opinion that the impugned order dated 05.09.2014 passed by the Judicial Magistrate Ist Class, Jalandhar and order dated 21.01.2015 passed by the Additional Sessions Judge, Jalandhar are neither in excess of jurisdiction nor do the same suffer from any material irregularity. Consequently, the impugned orders do not call for any interference in this petition though filed under Section 482 of the Code but virtually it is second revision. Resultant, the petition is dismissed.

08.07.2015
parveen kumar

(Paramjeet Singh)
Judge