

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revn.No.(F) 167 of 2014

Reserved on: March 17, 2015

Date of Decision: May 21, 2015

Smt.Gunjan and anotherPetitioner

Versus

Gaurav Kumar BhatiaRespondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Tanmoy Gupta, Advocate for the petitioners.

Mr.Abhimanyu Singh, Advocate for the respondent.

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TEJINDER SINGH DHINDSA, J.

A petition filed under Section 125 of the Code of Criminal Procedure (for short 'the Code') for grant of maintenance has been allowed vide order dated 1.8.2014 by the District Judge, Family Court, Gurgaon and in terms thereof, the husband, namely, Gaurav Kumar Bhatia has been directed to pay a sum of ₹7,000/- per month to the wife Smt.Gunjan and ₹5,000/- per month to the minor son, namely, Krish Bhatia as maintenance from the date of filing of the petition i.e. 2.1.2013.

2. The instant revision petition has been preferred by the wife and minor son seeking enhancement of the maintenance awarded to the tune of ₹50,000/- per month and thereby seeking

modification of the order dated 1.8.2014 passed by the Family Court, Gurgaon.

3. Learned counsel for the parties have been heard at length and the records of the case have been perused.

4. Facts, which are not in dispute, are that the marriage of petitioner No.1 was solemnized with the respondent on 24.6.2011 at Gurgaon as per Hindu rites and ceremonies. A male child was born out of wedlock on 23.11.2012. Parties have been staying separately since 23.4.2012.

5. Petition under Section 125 of the Code seeking maintenance of ₹50,000/- per month was filed by the petitioners herein before the Family Court, Gurgaon on 2.1.2013. Such petition was resisted by the husband by taking a stand that the wife was under the mis-guidance of her parents and had left the matrimonial home and staying separately since 23.4.2012 of her own free will and accord.

6. The Family Court, Gurgaon, while passing the order dated 1.8.2014, has discarded such plea of the husband and has observed that no material/evidence was adduced on record to show that the wife had left the company of the husband of her own accord. Pleadings on record would also reveal that the wife had moved an application to the Women Cell and had appeared before the Protection Officer, Gurgaon on 11.4.2012 and thereafter had filed another application before the Protection Officer on 24.4.2012 alleging harassment and physical assault at the hands of the respondent/husband. Even FIR bearing No.473 dated 24.5.2012, under Sections 498-A, 406 and 506 of the

Indian Penal Code stands registered at Police Station City Gurgaon against husband and mother-in-law at the instance of petitioner No.1 i.e. the wife.

7. Be that as it may, the order dated 1.8.2014 passed by the Family Court granting maintenance in favour of the wife and minor child by taking a view that the wife has not left the matrimonial home of her own accord, has not been assailed by the husband. Rather, his stand is that the order dated 1.8.2014 passed by the Family Court, Gurgaon is being complied with and the maintenance that has been granted is being duly paid and released in favour of the wife and the minor child.

8. As such, the only issue that would require examination in the instant revision petition is with regard to quantum of maintenance.

9. The scope and purpose behind Section 125 of the Code has been dealt with in a catena of judgments rendered by the Hon'ble Supreme Court of India. In **Chaturbhuj v. Sita Bai, 2008(1) RCR (Criminal) 163**, the Apex Court, while discussing the basic purpose under Section 125 of the Code, held as follows:

*“Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in **Captain Ramesh Chander Kaushal v. Veena Kaushal, (1978)4 SCC 70** falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It 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. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat, 2005 (2) RCR (Criminal) 190: 2005(2) R.C.R. (Civil) 151: 2005(1) Apex Criminal 596: (2005) 3 SCC 636.”

10. In **Sunita Kachwaha and others v. Anil Kachwaha**, 2014(4) RCR (Criminal) 831, it was observed that proceedings under Section 125 of the Code are summary in nature and in such proceedings, it was not necessary for the Court to ascertain as to who was in the wrong, and the minute details of the matrimonial dispute between the husband and the wife need not be gone into.

11. In a recent judgment of the Apex Court in **Bhuwan Mohan Singh v. Meena & others**, 2014(3) RCR (Criminal) 723, the scope and ambit of Section 125 of the Code was dealt with and it was observed as under:

“Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short “the Code”) was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the Court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like

an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able bodied. There is no escape route unless there is an order from the Court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds."

12. Adverting back to the facts of the instant case, it has gone uncontroverted that the respondent/husband is a B.Tech Software Engineer, employed as Technical Leader with Aricent Group, Palam Vihar, Gurgaon. The wife while claiming

maintenance had stated the salary of the husband to be in excess of ₹1 lac per month. The Family Court while granting maintenance of ₹7,000/- per month to the wife and ₹5,000/- per month to the minor son has relied upon the salary slips of the husband which were placed on record as Exhibits RW1/B to RW1/D. Such salary slips apparently reflected the take-home salary of ₹35,600/- per month.

13. The Family Court, however, has completely ignored the testimony of the husband, who in cross-examination as RW1 had deposed to the following effect:

“My mother is a retired teacher and she is getting ₹18,000/- per month. My gross salary is ₹11,25,000/- per year. Besides, I am getting bonus which varies from project to project and year to year and as per performance of mine as well as performance of Company. Last year, I got bonus amounting to ₹48,000/-, before last year. I got bonus amounting to ₹60,000/- to 70,000/-. I have no rental income from our house located at Alwar which is in the name of my mother. After marriage, my wife did not do any job anywhere. I do not know whether she did any job before the marriage or not. She delivered child at her parental home and all the expenses were borne by her parents.....”

14. Even in para 7 of the reply placed on record on behalf of the husband/respondent to the present petition, the sum of ₹11,25,000/- per annum is sought to be explained as “Cost to

Company". It has been submitted that the monthly gross salary is ₹61,000/- after deductions in the nature of Employer Provident Fund, Gratuity, Medical Insurance and Company Incentives. The respondent has also not denied the release of bonus to him but has stated that such financial incentive depends upon individual and company performance and is not given per month.

15. In the considered view of this Court, the deductions under various heads, as noticed hereinabove, cannot be discarded while assessing the income of the husband for purposes of grant of maintenance to the present petitioners. The benefit of such deductions would ultimately enure to the benefit of the respondent-husband at the appropriate stage and time. As such, it would be safe to conclude that the monthly emoluments of the respondent-husband are much in excess of ₹61,000/-.

16. Respondent-husband has further resisted the claim of his wife and minor son as regards enhancement of maintenance by contending that it is his responsibility of maintaining the old widowed mother as he is the only son. Undoubtedly, such obligation is well-founded. Be that as it may, the respondent has himself conceded his mother to be a retired teacher and drawing pension of ₹18,000/- per month.

17. In the totality of circumstances and keeping in view the dictum laid down in **Bhuvan Mohan Singh's** case (supra) wherein it had been held that while granting maintenance under Section 125 of the Code, the wife would be entitled to lead a life of similar status while staying separately as she would have while continuing in the matrimonial home, petitioner No.1 i.e. wife is

held entitled to maintenance @ ₹15,000/- per month and petitioner No.2, minor son to maintenance @ ₹10,000/- per month.

18. Accordingly, the present petition is partly allowed. The order dated 1.8.2014 passed by the Family Court, Gurgaon is modified to the extent of enhancing the maintenance from ₹7,000/- per month to ₹15,000/- per month in favour of petitioner No.1 i.e. wife and from ₹5,000/- per month to ₹10,000/- per month to petitioner No.2 i.e. the minor son. Arrears in pursuance to such enhancement calculated from the date of filing of the petition under Section 125 of the Code i.e. 2.1.2013 would be released to the petitioners within a period of two months from the date of receipt of a certified copy of this order.

19. Petition disposed of in the aforesaid terms.

May 21, 2015
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: Whether to be referred to Reporter? (Yes/No)