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

**Crl. Revision (F) No. 112 of 2015**

**Rajiv Gupta**

**...... Petitioner**

**versus**

**Sujata Gupta and another**

**... Respondents**

**Crl. Revision (F) No. 150 of 2015**

**Sujata Gupta**

**...... Petitioner**

**versus**

**Rajiv Gupta**

**... Respondent**

**Date of decision : 29.10.2015**

**CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY**

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

Present: Mr. Rajesh Gupta, Advocate (in Crl. Rev. (F) No. 112 of 2015)
Mr. Sukant Gupta, Advocate (in Crl. Rev. (F) No. 150 of 2015)
for the petitioner(s).

Mr. Sukant Gupta, Advocate (in Crl. Rev. (F) No. 112 of 2015)
Mr. Rajesh Gupta, Advocate (in Crl. Rev. (F) No. 150 of 2015)
for the respondent(s).

**ANITA CHAUDHRY, J.**

This order shall dispose of Crl. Revision (F) Nos. 112 and 150 of 2015 titled ***Rajiv Gupta vs. Sujata Gupta and another*** and ***Sujata Gupta vs. Rajiv Gupta.***

Two revision petitions have been filed, one by husband, the other by the wife. Both of them are aggrieved by the judgment dated 09.04.2015 passed by the Family Court, Gurgaon. The Family

Court had allowed ` 50,000/- per month as maintenance to Sujata Gupta and Yajur son of Rajiv Gupta. The husband claims that amount awarded is on the higher side while the wife seeks enhancement of the maintenance.

Sujata and her son Yajur had filed a petition under Section 125 Cr.P.C. seeking maintenance. Sujata was married to Rajiv in September 2004. It was a love marriage. The wife was working as Computer Science Teacher at I.T.M. University, Gurgaon. The respondent at that time was a Software Engineer. Differences arose between the couple. The parents of the wife shifted to Gurgaon after their retirement and started living with the wife's brother. The relations soured. Allegations were levelled that the husband compelled her parents to bear the household expenses. The wife had alleged that the husband had forged her signatures and had created a liability of more than ` 26 lacs on her. It was pleaded that the Panchayat was convened to settle the dispute in which the husband had agreed to pay ` 20,000/- per month besides house rent but that was not paid after few months. Ugly scenes erupted and the situation gradually worsened and it had become unbearable. The petitioner (wife) further pleaded that she was living in a rented house and was dependent on her parents for help and required ` 80,000/- for maintenance. It was also her plea that the son had a squint in the eye for which he was being treated.

With respect to the income of the husband, it was pleaded that his annual salary was ` 21 lacs and was leading a lavish life style and had taken LIC policies.

The respondent admitted the relationship and denied all the allegations of cruelty or demand or that of forgery on his part. It was pleaded that there was no demand of dowry and material facts had been concealed about her income and the FDRs. It was pleaded that the petitioner was highly qualified and had done her M.sc. (Computer Science), M.Tech., B.Ed and was pursuing her Ph.D. and was earning more than ` 75,000/- per month besides earning ` 40,000/- per month from tuition. It was pleaded that the wife had filed a suit levelling false allegations and that she was involved in extra marital affair. It was pleaded that wife was suspicious by nature and she used to talk to two men at odd hours for long spells. It was pleaded that in June 2012 the wife had agreed to behave properly and he was paying the expenses for their son. It was pleaded that in June 2013 an FIR was got registered and the petitioner had taken all the property including her Istridhan. It was pleaded that he was earning only ` 65,000/- per month and she had set up an exaggerated claim of maintenance. It was denied that son was having any eye problem.

Both the parties led their evidence and took support from the documents filed by them. The District Judge Family Court awarded ` 25,000/- to each of the petitioners from the date of filing of the petition i.e. 31.10.2013.

During the proceedings the petitioner had examined herself and had given her affidavit Annexures P-2 and P-3 where she had referred to her gross income as ` 53,038/-. With respect to her FDRs, NSC, IVP, KVP, Post Office Schemes, PPF etc. she had given details which are as under:-

*NSC ` 25,000/- purchased on 28.2.2010 (tax saving purposes under 80C)*

*` 35,000/- purchased on 15.2.2010 (tax saving purposes under 80C)*

*` 30,000/- purchased on 30.12.2011 (tax saving purposes under 80C)*

*PPF – Approximately ` 1,40,000/- (tax saving purposes under 80C)*

*Infrastructure Bond - ` 20,000/- purchased on 10.1.2012 maturity date 09.01.2022 (tax saving purposes under 80C).*

The petitioner had also pleaded that her son was studying in Delhi Public School, Gurgaon and she had taken a loan of ` 85,510/- to meet the admission expenses. With respect to her expenses she had pleaded that she was paying ` 16,000/- per month as rent and the total expenses of rent and maintenance including electricity and water is ` 20,800/- and she was paying loan of ` 12,000/- as installment for the car loan. It was pleaded that she had taken LIC also and was paying ` 20,000/- per annum and Medi Claim for her son of about ` 8000/- per annum. The petitioner had summoned the official from the Income tax office to produce the income tax return of the husband. Ex. P-60 was tendered in evidence.

The respondent brought the summoned record and produced the Bank statement of Sujata Ex. R-2 and disclosed that there was an opening balance of ` 1,97,930/- on 01.10.2012. RW-2 had brought the Form 16 from year 2011 till 2014 and produced copies Ex. R-6 to R-10.

The respondent gave affidavit Ex. RW-3/A and pleaded that he was earning ` 65,000/- per month and was working as a

Client Service Manager with M/s AON Hewitt Company.

Rajiv Gupta respondent in his affidavit submitted that petitioner was working as a Assistant Professor and was earning more than ` 75,000/- per month in addition to tutions she was giving to Computer science students. With respect to his own income, he had stated that he was earning ` 65,000/- per month and was working with M/s AON Hewitt Company as Client Service Manager. He had submitted that the petitioner had levelled false allegations and had falsely connected his name with his Bhabhi levelling illicit relations with an intention to attack his character which had mentally shocked him. He submitted that the petitioner (wife) used to humiliate him. He submitted that the petitioner used to check his mobile, office laptop daily. He had pleaded that the petitioner pressurized him to finance her M.Tech. from a self financed institute and when he had suggested that such courses were beyond his means and advised her to sit in the entrance examination and she got angry and abused him calling him a beggar. It was pleaded that the child was only in the second standard and the monthly fees was ` 2200/- per month. He had pleaded that he had other liabilities and his father was a pensioner and was getting ` 612/- per month and his mother was a housewife.

The respondent had stated that the petitioner(wife) was leading a luxurious life and was maintaining a car and her brothers were not contributing and the petitioner was spending her money on her parents.

Ramesh Chand Shukla from the Income Tax Office RW5 brought the income tax return from 2013 onwards with respect to

Sujata Gupta.

Deepak Kumar Prusty Finance Executive M.S.L. Learning Systems RW6 brought the summoned record and deposed that payment of ` 33,030/- was made to Sujata by their company and proved the confirmation letter Ex. R15. Jagbir Singh Koyal RW-7 brought the account and proved its copy Ex. R-16.

The trial Court considered the evidence arrived at a finding that petitioner No. 1 required approximately ` 40,000/- per month for the expenses of her son and her own salary being meager she was unable to meet the expenses alongwith other house hold expenditure. It noted that petitioner No. 1 (wife) was an earning hand and was drawing salary as a lecturer which was about ` 50,000/- per month and observed that her salary could not be equated with the salary of the respondent (husband) as he was getting salary of ` 89,771/- besides 10% as performance bonus and allowed ` 25,000/- each month per month to petitioners No. 1 and 2 from the date of filing of the petition.

The submission made on behalf of the husband was that the wife was earning ` 53,000/- per month and was a Lecturer. It was urged that she was unable to maintain herself. It was urged that the income tax return available on record would show that the total income per annum was ` 6,54,990/- and ` 75,000/- had been deposited in the PPF account and ` 28,000/- was being paid as Life Insurance Premium. It was urged that the statement of accounts of the wife is available on record and deposits from 1.10.2012 upto October 2014 were to the tune of ` 22,00,000/-. It was urged that the wife has having sufficient income of her own and no amount should have been allowed to her. It was urged that the petitioner - Rajiv has to maintain his parents residing at Yamuna Nagar and there are age related expenses and petitioner was ready to bear the medical expenses of the child and also contribute for his upkeep.

The submission on the other hand was that the wife was living in a rented accommodation and was paying ` 16,000/- as rent and the husband was getting yearly bonus of over ` 1,00,000/-. It was urged that the wife had to raise loans from private persons to pay the school fees and each year admission fee is charged and ` 85,000/- was deposited at the time of start of the Session. It was urged that the child was suffering from a squint and had infection in the urinary tract. It was urged that the child was studying in DPS Gurgaon. It was urged that vide Annexure P-11, a sum of ` 1,54,000/- had been paid to the school. Referring to the Bank statement it was submitted that the wife had taken loans and those are indicated in the bank statement. Reference was made to the entries on 22.10.2012 where a sum of ` 10,000/- is shown to have been taken from Harsha Monga. Reference was made to the entry dated 5.1.2013.

Learned counsel appearing for the wife had urged that the child was not well and medical expenses had to be incurred for his treatment and had referred to Annexures P-52 to P-59. It was urged that it is the obligation of husband to maintain his wife and he can not plead that he can not maintain his wife due to financial constraints and the husband was under a bounden duty to enable the wife to live a life of dignity according to their social status and strata and it is not sustenance alone. It was urged that the revision petition had also been filed by the wife seeking modification and enhancement of the maintenance. It was urged that the petitioner was earning much higher income as compared to the respondent and the husband was liable to maintain the wife and child. Reliance was placed upon ***Shamima Farooqui vs. Shahid Khan, 2015(2) RCR(Civil) 628, Bhuwan Mohan Singh vs. Meena and others, (2015) 6 Supreme Court Cases 353, Vinny Parmvir Parmar vs. Parmvir Parmar, (2011) 13 Supreme Court Cases 112, Jayant Bhargava vs. Priya Bhargava, 2011(3) RCR(Civil) 942, Sawinderjit Singh vs. Kuldip Kaur, 2000(2) RCR(Civil) 702, Devi alias Sita Verma vs. B. Verma, 2014(1) RCR(Civil) 1018*** and ***Smt. Jasbir Kaur Sehgal vs. The District Judge, Dehradun, 1997(4) RCR (Civil) 65.***

It is unfortunate case of a girl and a boy who had studied together, shared a beautiful relationship and got married after a long courtship in 2004. A child was born to them in January 2006. The wife after her marriage did her M.Tech. (Masters of Technology) in Software Engineering from I.T.M. University Gurgaon. Differences arose some time in 2012 which led to mediators stepping into to sort out their differences. The wife registered an FIR on 04.06.2013 against the husband and his family members in Palam Vihar. The petition under Section 125 Cr.P.C. was filed in October 2013. The child born out of the wedlock is with the mother. The father is ready to take the child in his custody.

Both the sides had levelled serious allegations against each other which are not relevant for the disposal of the controversy in hand.

The petitioner had claimed that the husband was earning ` 1,80,000/- per month while she was earning ` 40,000/- per month which was not sufficient for herself and her minor son. It was pleaded that she has to spend more than ` 40,000/- on the education, tution, school fees of the child and she was residing in a rented house and was dependent on her parents for most of her needs and she needed ` 80,000/- towards maintenance of herself and her son and she had disclosed the expenses in the affidavit which include visit to the Physiotherapist, the Social obligations/Shaguns/Gifts which she had to give on behalf of the child besides the basic requirements. She has referred to the festival shopping, birthday celebration, the annual holidays and miscellaneous expenses like child visits on their birthdays which are reproduced here in below:-

> *a. School fee/admission fee/Exam fee/other school expenses like School Trip, Function Costume/Special Exam Fee(IMA)/School Magazine Fee : ` 6000/- per month.*
>
> *b. Special Diet Expenses of petitioner No. 2 (Pediasure, Multi Vitamin etc.) : `. 2000/- per month*
>
> *c. School Books/Stationary/Toys/Games/Equipments/ Water Bottle/Lunch Box/School Bag Charges: ` 5000/- per month*
>
> *d. Play School charges : ` 3500/- per month*
>
> *e. Tution Charges : ` 3000/- per month*
>
> *f. School bus/van Charges : ` 2000/- per month*
>
> *g. Hobby Class/extra-curricular classes expenses of petitioner No. : ` 4000/- per month*
>
> *h. Clothing and shoes Expenses for petitioner No. 2*

*including school Uniform (summer and winter), sports Uniform/Function/Party Dress, marriage dress, daily dress/Night suit/Woolen garments, under garments etc. : ` 7000/- per month*

*i. Medical Expenses of Petitioner No. 2 including (Eye treatment, Vaccinations/Boosters, seasonal illness, medicines, medical tests : ` 4000/- per month.*

*j. Recreation, Movie and Eating outside expenses : ` 2500/- per moth*

*k. Festival shopping (Crackers on Diwali, Dushhera gift, Holi colours and Pichkari, Christmas Gifts) for Petitioner No. 2 : ` 120,000/- (Annual)*

*l. Birthday Celebration of Petitioner No. 2 : ` 12,000/- (Annual)*

*m. Holidays Tour & Travel expenses of the Petitioner No. 2 : ` 15,000/- (Annual)*

*n. Other Misc. Expenses like visiting other children on their birthdays etc. ` 3000/- per month.*

The petitioner in para 19 of her petition had pleaded that she wanted admission of her son in a better school for which she required ` 95,000/- for his admission. It was pleaded that she required ` 80,000/- for the surgery of her child. The relief that was claimed in para 28 of the petition reads as under:-

*"a. Order Section 125 of Criminal Procedure Code, directing the Respondent to pay monthly maintenance of ` 95,000/- per month to the petitioner No. 1 and Petitioner No. 2.*

*b. Order directing the respondent to furnish an Affidavit of Assets, Income and expenditure before the adjudication of the instant petition.*

*c. Order directing the Respondent to give immediately an amount of ` 1,75,000/- for the eye* *surgery and New School Admission expenses of the Petitioner No. 2.*

*d. Order directing the Respondent to give an amount of ` 50,000/- immediately as it is urgently required for New rented House security amount.*

*e. Order directing the Respondent to give an amount of ` 70,000/- immediately as it is urgently required for cloths of both the petitioner because of changing weather conditions and also because of growing need and requirement of the Petitioner No. 2.*

*f. Award the cost of litigation expenses of ` 45,000/- in favour of the Petitioners.*

*g. Any other order in favour of the Petitioners and against the Respondent that this Hon'ble Court deems fit."*

The respondent pleaded that the wife was working as Assistant Professor in I.T.M. University and was earning ` 75,000/- per month and additional sum of ` 40,000/- from tutions and she was more qualified than him. It was pleaded that claim was highly exaggerated. It was denied that any surgery was required. It was pleaded that he was earning ` 45,000/- per month and the only source of income.

The trial Court found that the wife was earning ` 50,000/- per month while the husband was earning ` 89,000/- approximately. It had added 10% as performance bonus to the husband's income and it awarded ` 50,000/- for both the child and wife thereby leaving only ` 39,000/- for the husband.

The trial Court recorded the following:-

"*8. Similar is the case at hand. No doubt, the petitioner*

*No. 1 is an earning hand is admittedly drawing a salary as a Lecturer as per Ex. R8 but this by no means can be considered to be sufficient for both the petitioners. This document shows that the petitioner No. 1 has been regularly drawing her salary which is about ` 50,000/- per month but this cannot by any standard be equated with the salary of the respondent as per Ex. P4. Besides his own salary of ` 89771, the respondent has admitted that he is also getting 10% on target as performance bonus and he has a flexible salary. They are both contributing to their respective provident funds and also have Insurance Policies etc."*

Both sides have produced the income tax returns. Since the petitions had been filed in October 2013 we are concerned with the income which parties earned that year. Ex. P4 was income tax return for the year April 2013 upto March 2014 and the salary after deductions was ` 10,07,979/- before the deductions under Section 80C. The break up of the deductions given in the income tax return under 80C of Rajiv Gupta are as under:-

| ***9. Deductions under Chapter VIA (A) Sections 80C, 80CCC and 80 CCD*** | | |
|---|---|---|
| | Gross Amount | Deductible Amount |
| a) Section 80C | | |
| Housing Loan – Principal Re-payment | 37,492.00 | 37,492.00 |
| Life Insurance Premium | 4,887.00 | 4,887.00 |
| Provident Fund | 61,583.00 | 61,583.00 |
| Voluntary Provident Fund | 165,000.00 | 100,000.00 |

The tax payable on the total income was about `

81,000/-.

Form 16 of the wife for the year starting April 2013 upto March 2014 is Ex. R-7 and the salary is shown to be ` 6,54,490/- and after deductions it is ` 5,51,623/-. The deductions under Section 80C was ` 1,00,000/- and the tax paid is ` 23,162/-.

When the petition was filed in 2013, the petitioner had pleaded that she was residing in a rented accommodation and had given her address of Sector 23, Gurgaon and it had been pleaded that she had been paying ` 16,000/- p.m. as house rent. Form 16 shows that house rent allowance of ` 93,267/- is being received by her from her office. In the revision filed by her she has indicated a different address and it has not been explained whether it is a rented accommodation or the accommodation occupied/owned by her parents.

Section 125 Cr.P.C. was amended and the legislature had raised the maintenance amount keeping in view the changes and the growing income. As per law the wife is entitled to lead a life in the similar manner as she would have lived in the house of her husband. As long as wife is held entitled to maintenance within the parameters of Section 125 Cr.P.C., it has to be adequate and she can not be compelled to live like a destitute or a beggar. In the present case the wife does not belong to that category of Society.

Section 125(1) Cr.P.C. together with its sub-clauses read as under:-

> *"125. (1) If any person having sufficient means neglects or refuses to maintain -*
> *(a) his wife, unable to maintain herself, or*
> *(b) legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or*

*(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or*

*(d) his father or mother, unable to maintain himself or herself".*

The expression "unable to maintain" is used in all these sub-clauses. Sub-section (1)(a) deals with the case of wife. Sub-section (1)(b) is concerned with providing maintenance allowance to legitimate or illegitimate minor child whereas sub-section (1)(c) deals with the question of major child who is, by reason of any physical or mental abnormality or injury is unable to maintain itself. Sub-section (1)(d) deals with the father or mother who is unable to maintain himself or herself. In sub-section (c) of Section 125(1) there is intrinsic aid or evidence available for construing the expression "unable to maintain". If by this expression the legislature intended that every able bodied person who is otherwise able to earn, is not entitled to claim maintenance allowance under Section 125, then in sub-section (c) it was not necessary for the legislature to say in express terms that the child who has attained majority will be entitled to get maintenance only if by reason of any physical or mental abnormality or injury such a child is unable to maintain itself. This provision throws light on the intention of legislature. If the provision of sub-section (1)(a) is read in this context then in my opinion, it is quite clear that while construing the expression "unable to maintain" the concept of able bodied person's ability to earn cannot be imported. The expression "unable to maintain herself" connotes the situation wherein it is not possible for the wife to maintain herself from any other source, meaning thereby wherein it is demonstrated that but for the maintenance allowance claimed from her husband, she has no other source or means of maintenance.

Ability to earn many times depends upon several other factors, such as, education, experience, finances, family tradition etc. In the competetive employment market mere physical ability is not the only qualification required for getting a job.

The provisions contained in the Criminal Procedure Code were introduced with an intention to fulfill a social purpose. Its object is to compel a man to perform the moral obligation which he owes to society in respect of his wife and children. By providing a simple, speedy but limited relief, it seeks to ensure that the neglected wife and children are not left beggared and destituted and thereby driven to a life of vagrancy. The duty of the Magistrate keeping the objects and the provisions enshrined is to find out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family. The needs and requirements of the wife for such living moderate living can be fairly determined, only if her separate income, also is taken into account together with the earnings of the husband and his commitments. The wife here is income-tax payee and her returns are available on record. She is maintaining a car. She is earning for herself and is highly educated. The income she earns is sufficient for herself. Her bank account statement (Ex. R-2) shows that in two years there is deposit of over ` 22 lacs i.e. more than the income indicted in the income-tax returns. There are deposit to the tune of ` 22,38,338/- in her salary/saving bank account for the period from

01.10.2012 to 27.10.2014. The expenditure and the bill produced by the wife relating to her child's extra curricular activities are only to the tune of ` 10,000/-, ` 30,000/- approximately per annum is spent on extra classes with Shalom Day Care Centre.

The petitioner wife had to produce documents to show that there was monthly expenditure on medical expenses but those have not been produced. Ex. P-53 shows that the child had urinary infection in June 2014 and he was under treatment for a period of two months. There was no recurrence thereafter. There is no material to show that the child is to undergo any operation even otherwise the father is ready to contribute for the medical expenses if later the operation is advised.

Considering the income of the wife and taking into account that there are other liabilities on the husband i.e. his aged parents and no other liability on the respondent-wife, it can be said that the income she is earning is sufficient for her maintenance. It can not be said that she was unable to maintain herself. The Court below failed to record a specific finding in this regard. There is no finding that the income she was earning was insufficient for herself. The order awarding maintenance to the wife is set aside. So far as the maintenance awarded to the child is concerned, considering the life style and the education the child is getting and considering the growing age and his needs, I am of the view that the amount awarded was just appropriate and does not call for any interference.

In the light of the above, Crl. Revision (F) No. 112 of 2015 is partly allowed whereas Crl. Revision (F) No. 150 of 2015 is dismissed.

**October 29, 2015** **(ANITA CHAUDHRY)**
**reena** **JUDGE**