

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

Crl. Misc. M-10596 of 2014 (O&M)
Date of decision: November 8th, 2016

Geeta and others

...Petitioners

Versus

Sudesh Kumar

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Vijay Sharma, Advocate
for the petitioner.

Mr. Rishav Jain, Advocate,
for the respondent.

JAISHREE THAKUR, J.

The instant petition has been filed against the order dated 20th September, 2013 passed by the Additional Sessions Judge, Patiala, declining to further enhance the maintenance as awarded by the Judicial Magistrate 1st Class, Patiala, under Section 127 of the Criminal Procedure (for short '**Cr.P.C.**').

In brief, the facts are that initially the petitioners herein had preferred an application under Section 125 of Cr.P.C. seeking maintenance against respondent Sudesh Kumar. It was contended that petitioner No.1 is the wife of the respondent whereas petitioners No. 2 and 3 are his daughters. The said application was partly allowed and a sum of ₹500/- each was allowed to the daughters by the trial court, vide order dated 19th August,

2000, but no maintenance was granted to the petitioner-wife. Against the said order, a revision petition was filed in which maintenance of ₹500/- per month was also granted to petitioner-wife. Now by way of filing a petition under Section 127 of Cr.P.C., it was submitted that since an amendment has been made by the legislature in Section 125 of Cr.P.C. and the maximum limit of ₹500/- per month for grant of maintenance had been deleted, therefore, the court ought to give just and proper maintenance to the petitioners, as per the facts of the case. In the said petition, it was mentioned that petitioner No.2 is a student of TDC Part II whereas the younger daughter was studying in the 11th class. A claim was also made for marriage expenses of the two young daughters. It was contended that the respondent was running the business of photography, having digital cameras, computers, photostat machines, STD/PCO as well as the business of money lending and earning about ₹1 lakh per month.

A reply was filed to the said petition taking a stand therein that petitioner No.1 was in possession of sufficient moveable and immovable property and was in the business of stitching clothes and, thus, would not be entitled to maintenance as claimed. The trial court directed the respondent to pay maintenance of ₹6,500/- i.e. ₹1500/- to petitioner No.1 and ₹2500/- each to petitioner Nos.2 and 3. Aggrieved against this, two revisions were preferred before the Additional Sessions Judge, Patiala, one filed by the petitioners as well as the cross-revision filed by the respondent, who had challenged the order on the ground that there was no evidence on the record regarding his earning for the trial court to arrive at a conclusion that he was

liable to pay a sum of ₹6500/- per month. Both the revision petitions were dismissed. The instant petition has been filed by Smt. Geeta and two daughters of the respondent-Sudesh Kumar.

Learned counsel for the petitioners contends that the learned Additional Sessions Judge has erred in not enhancing the maintenance amount by ignoring the statement of the respondent himself wherein he has admitted to earning a sum of ₹1 lakh per month from his photography business. It is also argued that the learned Additional Sessions Judge ought to have granted marriage expenses as such expenses are part of maintenance. It is also argued that the maintenance ought to have been granted from the date of filing of the application instead of from the date of order, as has been done in the instant case.

Per contra, Mr. Rishav Jain, learned counsel for the appearing respondent contends that the revision has been rightly dismissed by the learned Additional Sessions Judge as there is no evidence on the record to hold that the respondent is earning a lakh of rupees per month and the statement made by the respondent has not been considered in right perspective. It was also argued that petitioner No.1 herein is earning approximately ₹9,000-10,000/- per month from tailoring business and she is residing in a house as provided to her by the respondent.

I have heard learned counsel for the parties and also perused the record of the case.

The question that needs to be determined as to whether the petitioners herein would be entitled to enhanced maintenance under Section

127 of Cr.P.C. from the date of passing of the order or from the date of filing of the application. It also needs to be determined as to whether the petitioners would be entitled to claim marriage expenses.

In **Major Singh Versus Joginder Kaur 1996 (3) AICLR 756**, a petition was filed under Section 482 of Cr.P.C. by the respondent seeking quashing of an order passed by the learned Additional Sessions Judge, whereby the respondent wife Joginder Kaur had been granted maintenance for herself and her daughter from the date of the application. The respondent wife had moved an application under Section 127 of Cr.P.C. claiming enhancement of maintenance allowance. The said application was allowed and her husband was directed to pay enhanced amount of maintenance from the date of the application. Aggrieved respondent filed a revision before the learned Additional Sessions Judge, who dismissed the same, leading to the filing of a quashing petition before the High Court. Challenge was made to the order of the courts below enhancing the amount of maintenance under Section 127 of Cr.P.C. from the date of the application by arguing that Section 127 of Cr.P.C. did not empower the court to enhance the amount of maintenance from the date of the application. The learned Single Judge in **Major Singh's case (supra)** held as under:-

“10. Therefore, there is no valid reason to hold otherwise. The Magistrate has to confine himself for the grant of maintenance allowance within the scope of Section 127 Criminal Procedure Code since Section 127 Criminal Procedure Code is silent regarding the grant of enhanced maintenance allowance from

the date of application, the necessary implication is that the Magistrate can grant the enhanced maintenance allowance only from the date of order.”

The Andhra Pradesh High Court, in a judgment reported in **Pilli Venkanna Versus Pilli Nookalamma and another 1998 CrILJ 1992**, in similar circumstances, held that any modification or alteration of the order regarding maintenance allowance would be effective from the date of order passed under Section 127 of Cr.P.C. and not from the date of application.

In the instant case, admittedly, the initial maintenance was granted ₹500/- per month to the two daughters. Thereafter, the petitioners preferred a petition under Section 127 of Cr.P.C. seeking alteration in the allowance on the ground that an amendment has come into effect in Section 125 of Cr.P.C. deleting the grant of maximum amount of ₹500/-. The legislature Under section 125 (2) Cr. P. C. has left it to the discretion of the Magistrate to grant maintenance either from the date of the application or order. The Supreme Court taking into consideration the divergent views over the issue held in **Shail Kumari Devi and Another vs. Krishan Bhagwan Pathak: (2008) 9 SCC 632** that the maintenance could be awarded from the date of the order or, if so ordered from the date of the application for maintenance as the case may be. In fact, all that is required is that if the order of maintenance is to be reckoned from the date of filing of the petition, it must be expressly stated in the order but without according any reason for such a direction. But in the case of the 'relevant date' in so far as altering maintenance granted under Section 125 Cr. P.C would necessarily be from

the date of order since a reading of Section 127 of Cr.P.C. would reveal that this section is silent as to from which date the enhanced amount is to be awarded. There is no similar provision in Section 127 Cr.P.C. as provided in Section 125 (2) Cr.P.C. allowing a similar discretion to the Revisional Court to grant maintenance from date of application. The judgments in **Major Singh and Pilli Venkanna (supra)** squarely apply to the facts of the present case and, thus, it is held that the order enhancing the maintenance allowance payable from the date of passing of the order is just and there is no illegality in the said order.

The second argument as raised by the learned counsel for the petitioner that both the courts below erred in not awarding marriage expenses is also not sustainable.

Initially, when an application under Section 125 of Cr.P.C. was filed, there was no claim for marriage expenses and only expenses claimed were monthly expenses. Thereafter, a petition came to be filed under 127 of Cr.P.C. seeking alteration in the order so passed, primarily on the ground that there had been an amendment in Cr.P.C. by which the provision of maximum cap of ₹500/- had been deleted. It was in this situation that an additional relief of marriage expenses had been sought. The contention raised that the marriage expenses are part of maintenance and thus, the learned trial court ought to have allowed the said expenses is not sustainable, in view of the fact that there was no claim for the said expenses in the initial application filed under Section 125 of Cr.P.C. Moreover Section 125 Cr. P.C. is a measure of social justice and is specially enacted to

provide for maintenance of wives, minor children and parents who are unable to maintain themselves, the object being to prevent vagrancy and destitution. Section 125 Cr.P.C provides a speedy remedy for the supply of food, clothing and shelter to the deserted family. Needless to say the relief to claim marriage expenses is always open to petitioners 2 and 3 being the daughters of the respondent. Hindu Adoption and Maintenance Act 1956 defines the term maintenance in Section 3 (ii) (b) which includes- (i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment; (ii) in the case of an unmarried daughter also the reasonable expenses of and incident to her marriage.

Section 125 Cr. P. C. is only applicable in the case of minor children and the magistrate rightly declined to award any maintenance in these proceedings towards any marriage expenses of a major daughter. In fact a major daughter, unless by reason of insanity, mental abnormality, injury is unable to maintain herself would not be allowed maintenance under Section 125 Cr.P.C .

Learned counsel for the petitioner relied upon a judgment rendered in **S. Jayalakshmi (Mrs.) Versus R. Prakash Rao 1996 (8) SCC 501** to contend that the magistrate erred in not awarding maintenance. In the aforesaid judgment it was observed that it was the duty of the father to see that his daughters are happily married and it was in those circumstances that a direction was given that he would pay a sum of ₹1 lakh for the marriage of each daughter as and when the marriage is fixed . However, the facts of that case would not be applicable herein since the Supreme Court was seized of

situation where the wife had filed a suit to set aside the exparte decree of divorce and to set aside the second marriage contracted by the husband. Moreover the direction was to pay as and when the marriage was fixed.

Further the argument raised by the learned counsel for the petitioners for seeking enhancement of the maintenance as awarded by the trial court is not sustainable. There is no evidence on the record to show what is the actual earning of the respondent. As per the statement, which has been annexed with the petition, the respondent has stated that he is attending marriage functions, films shooting etc. and used to charge amount of one thousand for these functions. It was also stated that he could not tell the current rate for charging for photography at these events, could be between ₹5,000/- to ₹1 lakh. From the reading of the said statement, it cannot be construed that the respondent had admitted to earning ₹1 lakh. Since there is no evidence on the record, this court finds no ground to interfere with the amount of maintenance already granted.

For the reasons afore-stated, there is no infirmity in the orders passed by the courts below and the present petition is dismissed.

November 8th, 2016
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes