

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revn. No. 365 of 2016

DATE OF DECISION: 29.01.2016

Chanchal Mehta

.....Petitioner

Versus

Supriya Mehta

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. **Whether reporters of local newspaper may be allowed to see judgment? (Yes)**
2. **To be referred to reporters or not? (Yes)**
3. **Whether the judgment should be reported in the Digest? (Yes)**

Present:- Ms. Reena Singh, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

Petitioner-Chanchal Mehta has filed the present revision petition to challenge order dated 17.12.2015 passed by Chief Judicial Magistrate, Fazilka, whereby, the respondent has been granted interim maintenance at the rate of ₹ 20,000/- per month from the date of filing of the application.

Briefly, the facts of the case as made out in the present petition are that the marriage of the petitioner and respondent was solemnized on 21.1.2006. Both the parties remained together and out of the said wedlock one female child was also born, who is at present residing with the petitioner. After passage of some time, differences arose between the parties and they were not able to pull on their matrimonial life.

Respondent-wife filed a petition under Section 125 Cr.P.C. for grant of interim maintenance to the tune of ₹ 60,000/- per month from the date of filing of the application stating therein that she had no source of income and was unable to maintain herself. The petitioner-husband was stated to be earning handsome salary i.e. more than ₹ 18 lacs per annum besides other allowances and having no liability as his father was retired employee from Bharat Heavy Electricals, Ranipur (Haridwar). Reply to the application was filed stating therein that the maintenance petition was filed by the wife as the petitions for grant of custody of the child as well as divorce were pending. It was also stated in the reply that respondent-wife being professionally qualified could earn handsome salary for her livelihood and hence was not entitled for any maintenance. After hearing both the parties and considering their contentions, the petition filed by respondent-wife was allowed on 17.12.2015 by passing the following order:-

“It is admitted fact on file that the applicant is legally wedded wife of respondent. The applicant has specifically averred in her application that she is household lady and she has no source of sufficient or independent income. To rebut the contentions of applicant the respondent has stated that she has professional qualifications and can earn a handsome amount for her livelihood to live a better life. But the respondent has not placed on record any material document in support thereof. Therefore, at this stage it is difficult to believe that the applicant is having sufficient source of income to maintain herself in the absence of any reliable document. Therefore, the applicant is entitled for interim maintenance from her husband being fully dependent upon the income of her husband. The respondent is also under moral and legal

obligation to maintain her wife.

Now, the question arises as to the amount of maintenance.

The applicant has specifically mentioned that, the respondent is serving in Orange Business Services and is earning ₹ 18,00,000/- per annum besides other allowances. Whereas the respondent admitted that at present he monthly earned ₹ 1,10,000/- per month from private job after deduction of taxes. He also averred that he has to spent huge expenditure on the litigations filed by the applicant. Therefore, this court is of the opinion that the respondent is having sufficient earnings to maintain the applicant. Keeping in view of the monthly income of the husband and further considering that he has already filed the divorce petition against the present petition. It seems that the respondent himself is not willing to join the company of the applicant at this stage. Accordingly, I deem it fit to grant interim maintenance @ ₹ 20,000/- per month to the applicant.

In view of my above discussions, the application in hand is allowed in the manner that the applicant is granted interim maintenance @ ₹ 20,000/- per month from the date of filing the application. The respondent is directed to make the payment of arrears of maintenance within 30 days from the passing of this order. The application in hand is disposed of accordingly.”

Now the present revision petition has been filed by the petitioner-husband to challenge order dated 17.12.2015, vide which, respondent-wife has been granted interim maintenance at the rate of ₹ 20,000/- per month from the date of filing of the application.

Learned counsel appearing for the petitioner submits that the respondent-wife is professionally qualified and is not entitled for any interim maintenance as she is in a position to earn her livelihood but this fact has not been considered by the trial Court while allowing the petition under Section 125 Cr.P.C. She further submits that the respondent-wife is also having moral and legal obligation to maintain her minor daughter. The daughter is residing with the petitioner and he is bearing all her expenses including medical expenses. In case all the expenses are calculated then his salary is much less than the expenses incurred by him and as such the amount of maintenance awarded to the respondent is on the excessive side.

Heard the arguments advanced by learned counsel for the petitioner and have also gone through the documents available on the file.

The impugned order for grant of maintenance to the respondent-wife has been challenged mainly on the ground that it is on the excessive side and the respondent-wife being professionally qualified is in a position to earn her livelihood.

Section 125 Cr.P.C. is relevant for resolving the controversy in hand, which is reproduced as under:-

125. Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his 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, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

The argument of learned counsel for the petitioner is that the respondent-wife is not entitled for maintenance as being highly qualified, she is capable to maintain herself. As per provisions of Section 125 Cr.P.C., the expression 'unable to maintain herself' clearly shows that it does not mean 'capable of earning'. In other words the expression puts the emphasis on the wife being unable to maintain herself and not on the capacity of wife to 'earn for herself'. The ingredients of Section 125 Cr.P.C. clearly shows that the wife who is unable to maintain herself is entitled for maintenance. Nowhere it has been mentioned that only the wife who is capable of earning is not entitled for maintenance.

In the present case, neither it is stated in the reply filed of the petition nor argued that the respondent-wife is earning. Simply it has been mentioned that the respondent-wife is possessing professional qualification and can earn her livelihood.

Hon'ble the Apex Court in **Bhagwan Dutt Vs. Kamala Devi**

(1975) 2 SCC 386 has held as under:-

“The wife should be in a position to maintain a standard of living which is neither luxurious nor penurious but what is consistent with status of family. The expression 'unable to maintain herself' does not mean that the wife must be absolutely destitute when she applies for maintenance under Section 125 Cr.P.C.”

In **Smt. Tejaswini V. Aravinda Tejas Chandra** 2009 (3) KCCR 2245 , the Karnataka High Court while resolving similar controversy has observed as under:-

“The fate of this petition rests mainly on the interpretation of the expression 'unable to maintain herself'. A plain reading of the expression keeping in view the meaning assigned to every word that appears in the said expression cannot lead any one to read such expression as to mean 'capable of earning'. In other words, the expression puts the emphasis on the wife being unable to maintain herself and the emphasis is not on the capacity of wife to earn for herself. As such, the potential earning of the wife is not in contemplation in the expression that is found in section 125 (1) (a) of the Cr.P.C. As rightly 'argued by the learned counsel for the petitioner, if the expression 'unable to maintain herself is to be interpreted as to mean 'capable of earning' then the very purpose of introducing Section 125 of the Cr.P.C. will be rendered redundant. This is because it is always possible to say in a given case where the wife seeks maintenance, that she has the potential to earn something or that she is capable of earning for herself and if that interpretation is accepted, then it may be possible to reject

almost every petition that is filed under Section 125 of the Cr.P.C. and this is not the intention of the legislation.”

It was also observed that:-

17. Keeping in view the aforesaid principle of interpretation of statute, in the instant case, as already observed by me earlier, plain reading of the expression 'unable to maintain herself' cannot lead to the meaning 'capable of earning for herself'. Therefore, what is not contemplated by the legislature cannot be read into it by the Court. The expression which is under discussion does not take into account the potential earning capacity of the wife but all that it says is that if the wife is unable to maintain herself and if she satisfies other requirements of the section namely a person having sufficient means neglects or refuses to maintain his wife, the petition by the wife for maintenance cannot be rejected merely on the footing that a wife is capable of earning for herself.

18. This conclusion is also based on the reasoning that though the wife is a highly educated person in a given case and she does not choose to go for work but wants to sacrifice her entire life for the well-being of the family even at the cost of a lucrative job, it cannot be said that in such a case, the wife will not be entitled to maintenance if her husband neglects or refuses to maintain her. As rightly pointed out by the learned counsel for the petitioner, despite holding a higher educational qualification, it is not incumbent on the part of the wife to go for a job particularly when she is prepared to sacrifice a prospective career for the sake of her family.

Similarly in another judgment of Karnataka High Court

rendered in case of **Ramesh Vs. Dr. Laxmi and others** 2014 (3) Crimes 267, the plea taken by the husband was that his wife, being MBBS doctor was in a position to earn her livelihood being qualified. The stand taken by the wife was that she was not having any source of income and no evidence was brought on record by the husband that she was earning something or having any source of income. The order granting maintenance of ₹ 15000/- to wife was upheld.

Proceedings under Section 125 Cr.P.C. are of summary in nature and are intended to enable destitute wives and children, whether they are legitimate or illegitimate and to get maintenance in a speedy manner. It is meant to achieve social purpose and to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife.

In recent judgment of Hon'ble the Apex Court in the case of **Sunita Kachwaha and others Vs. Anil Kachwaha** 2014 (4) RCR (Criminal) 831, the wife was residing separately and she claimed maintenance from her husband. An objection was raised by the husband that the wife was having sufficient means to maintain herself, which was rejected by Hon'ble the Apex Court by holding that merely because the wife was earning money and may be highly qualified but that cannot be a ground to reject the claim for maintenance. The relevant observation made in para 9 of the judgment is reproduced as under:-

“Inability to maintain herself is the pre-condition for grant of maintenance to the wife. The wife must positively aver and prove that she is unable to maintain herself, in addition to the fact that her husband has sufficient means to maintain her and that he has neglected to maintain her. In her evidence, the appellant-wife has stated that only with the help of her retired

parents and brothers, she is able to maintain herself and her daughters, while her husband's economic condition is quite good and the wife was entitled to maintenance.”

This Court in the case of **Rajwinder Kaur Vs. Harvinder Singh** 2014 (2) Law Herald 1312 has held that appropriate maintenance commensurate with the needs of wife keeping in view the paying capacity of her husband, and is a legitimate right of the wife which should not be denied to her. It has also been held that no element of greed should be seen into genuine needs of the wife. Same view was taken in another judgment of this Court in the case of **Lt. Col. Raj Kumar Vs. Smt. Seema Dahiya and another** 2015 (4) Law Herald 2919.

The legal position reiterating the object of Section 125 Cr.P.C. has been observed by Hon’ble the Apex Court in the case of **Chaturbhuj Vs. Sita Bai** 2008 (1) RCR (Criminal) 163, which is reproduced as under:-

“[Section 125](#) CrPC 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) RCR (Civil) 151: 2005 (1) Apex Criminal 596: (2005) 3 SCC 636.

In the present case, an amount of ₹ 20,000/- per month has been awarded to respondent-wife as interim maintenance from the date of filing of the application. Admittedly, the petitioner-husband is serving in a private company and at the time of passing of the impugned order, he was earning handsome salary i.e. ₹ 1,10,000/- per month after deduction of the tax and by considering the income of the petitioner and in view of provisions of Section 125 Cr.P.C., the amount of interim maintenance has been awarded, which cannot be said to be on the excessive side.

Accordingly, in view of the facts as well as law position explained above, there is no merit in the contention raised by learned counsel for the petitioner and the petition being devoid of any merit is hereby dismissed.

January 29, 2016
pooja

(DAYA CHAUDHARY)
JUDGE