

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR (F) No. 106 of 2015 (O&M)

DATE OF DECISION: 26.02.2016

Vishal Saxena

.....Petitioner

Versus

Swati Bhatnagar

.....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:- Mr. Ashish Deep Verma, Advocate
for the petitioner.

Mr. Ajaivir Singh, Advocate
for the respondent.

DAYA CHAUDHARY, J.

The marriage between petitioner-husband-Vishal Saxena and respondent-wife-Swati Bhatnagar was solemnized on 26.10.2009. After marriage, they resided together as husband and wife at Jaipur (Rajasthan) and thereafter they shifted to Vietnam. No child was born from the said wedlock. Some differences arose between the parties. The petitioner-husband and his family members started ill-treating and harassing the respondent-wife for not fulfilling the demand of dowry. The parents of respondent-wife made all efforts to reconcile the matter but to no avail. The respondent was given beatings and was tortured physically as well as mentally and ultimately she returned from Vietnam. Thereafter, the

respondent-wife lodged a complaint against the petitioner and his family members, on the basis of which, FIR No. 58 dated 15.6.2010 under Sections 498-A, 406, 506 IPC was registered at Police Station Sector 56 Gurgaon. She also filed a petition under Section 125 Cr.P.C. for claiming maintenance on the ground of having no independent source of income, whereas, petitioner-husband was working with KBS Global Pvt. Ltd and other Global Companies and was earning ₹ 5 lacs per month. He was having two houses besides rental income of ₹ 80,000/- per month. Reply to the said petition was filed by the petitioner-husband denying all the allegations. The stand taken by the petitioner-husband was that it was the respondent-wife, who had left the matrimonial home, whereas, he was not at fault. He also denied allegations of demand of dowry as well as harassment. It was also averred by the petitioner-husband in the reply that he was not getting any job due to multiple litigations and was unable to find any work also. With regard to his income, he also averred that his monthly income never exceeded ₹ 35,000/-.

After considering the submissions made by both the parties, learned District Judge, Family Court, Gurgaon by relying upon the stand of petitioner-husband of getting salary of ₹ 35,000/- per month awarded maintenance at the rate of ₹ 20,000/- per month from the date of filing of the petition i.e. 1.6.2013 vide order dated 6.4.2015, which is the subject matter of challenge here in the present petition.

Notice of motion was issued in the case on 8.5.2015.

At the very outset, learned counsel appearing for the respondent submits that the petitioner has not paid even a single penny after passing of order dated 6.4.2015, vide which, the amount of maintenance was ordered to be paid w.e.f. 1.6.2013. Respondent-wife is leading a starving life as she did not have any source of income to earn her

livelihood. Learned counsel for the respondent submits that the arrears of maintenance due as on today is ₹ 6 lacs approximately .

Learned counsel for the petitioner submits that the petitioner is not earning anything and being unemployed he is not in a position to pay even a single penny. The amount awarded by the lower Court is contrary to provisions as the same cannot be awarded unless and until husband is having source of income.

Learned counsel for the petitioner was asked to deposit some of the arrears but he has shown his reluctance and submitted that as the petitioner is not earning anything, therefore, he is not in a position to pay the same.

Heard the arguments advanced by learned counsel for the parties and have also perused the impugned order and other documents available on the file.

The facts with regard to marriage between the parties, filing of petition under Section 125 Cr.P.C. and awarding of an amount of ₹ 20,000/- per month as maintenance by the lower Court have not been disputed. Although in the petition filed by the respondent-wife, it has been mentioned that petitioner-husband was working with KBS Global Private Limited and other Global Companies and was earning ₹ 5 lacs per month and also owned two houses besides rental income of ₹ 80000/- per month. The stand taken by the petitioner-husband is that he has lost his job due to pendency of multiple litigations filed by the respondent-wife and even was not having his passport with him due to which he is unable him to find any work. The stand further taken is that his monthly income never exceeded ₹ 35,000/- By considering the rival contentions of the parties and salary of the petitioner-husband as ₹ 35,000/- per month, an amount of ₹ 20,000/- as maintenance was awarded to the respondent-wife by the District Judge,

Family Court, Gurgaon. The only argument raised before this Court to challenge the impugned order of grant of maintenance is that the petitioner does not have any source of income and is not in a position to pay any amount. What to talk about payment of the arrears of the amount of maintenance due till date, he is not even ready to make payment of some of the arrears of the maintenance.

For resolving the controversy the in hand, Section 125 Cr.P.C. is relevant, 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 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.

Before proceeding further with the issue in dispute, it is appropriate to peruse the object of provisions of Section 125 Cr.P.C. The reading of sub-Section (1) of Section 125 Cr.P.C. leaves no room for doubt that if any person having sufficient means, neglects or refuses to maintain his wife, who is unable to maintain herself or her legitimate or illegitimate child (children) unable to maintain itself (themselves), or his father or mother who are unable to maintain himself/herself, the Court upon proof of negligence or refusal, order such person to pay maintenance to his wife or child (children) or parents, as the case may be. As far as 'interim'

maintenance is concerned, Section 125 of the Code was originally enacted, did not expressly empower the Court to make such order and direct payment of interim maintenance but the Code equally did not prohibit the Court from making such an order. **The primary object is to secure relief to the deserted and destitute wives, discarded and neglected children and disabled and helpless parents and to ensure that no wife, child or parent is left beggared and destitute on the scrap-heap of the society so as to be tempted to commit crime or to tempt others to commit crime in regard to them.** The Court is having implied power to pass such an order. Admittedly, the remedy provided by Section 125 Cr.P.C. is a summary remedy securing reasonable sum by way of maintenance subject to a decree passed by the competent civil court. In absence of any express bar or prohibition, Section 125 Cr.P.C. cannot be interpreted as conferring power by necessary implication to make interim order of maintenance subject to final outcome in the application. As per provisions of the Section, two conditions are precedent to show that the wife is unable to maintain herself and that the husband has neglected or refused to maintain his wife.

In **Gaurav Sondhi Vs. Diya Sondhi**, 120 (2005) DLT 426, Delhi High Court has laid down the following guidelines while granting 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.

(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.”

Hon'ble the Apex Court in the case of **Jasbir Kaur Sehgal Vs.**

District Judge Dehradun and others 1997 (4) RCR (Civil) 65 has held as follows:-

"The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate."

This being the position of law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is

unable to maintain the wife due to financial constraints as long as he is capable of earning.

In this context, I may profitably quote a passage from the judgment rendered by the High Court of Delhi in [Chander Prakash Bodhraj v. Shila Rani Chander Prakash AIR 1968 Delhi 174](#) wherein it has been opined thus:-

"An able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable to reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him."

From the aforesaid enunciation of law it is limpid that the obligation of the husband is on a higher pedestal when the question of maintenance of wife and children arises. When the woman leaves the matrimonial home, the situation is quite different. She is deprived of many a comfort. Sometimes the faith in life reduces. Sometimes, she feels she has lost the tenderest friend. There may be a feeling that her fearless courage has brought her the misfortune. At this stage, the only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot be allowed to resign to destiny.

In ***Shamima Farooqui vs. Shahid Khan, 2015(2) RCR (Criminal) 526***, it has been held by Hon'ble the Supreme Court that plea of

husband that he is not doing job and has no means to pay, cannot be accepted to deny the maintenance as these are only bald excuses. In case the husband is healthy, able bodied and is in a position to support himself, he is under legal obligation to support his wife as well. Hon'ble the Supreme Court has gone to the extent in saying that it is the obligation of the husband to maintain his wife and he cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning. In this context, a passage is quoted from the judgment of case in ***Chander Prakash Bodhraj vs. Shila Rani Chander Prakash, AIR 1968 Delhi 174***, wherein it has been held as under: -

“An able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable to reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him.”

A three-Judge Bench of Hon'ble the Supreme Court in ***Vimla (K.) vs. Veeraswamy (K.), 1991(3) RCR (Criminal) 639***, while discussing about the basic purpose under Section 125 of the Code, opined that Section 125 of the Code 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.

A two-Judge Bench of Hon'ble the Supreme Court in ***Kirtikant***

D. Vadodaria v s. State of Gujarat and another, 1996(3) RCR (Criminal)

147, while adverting to the dominant purpose behind Section 125 of the Code, ruled that:

“While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation.”

Admittedly, in the present case, the trial Court has recorded a finding on the basis of stand taken by the petitioner that his income did not exceed ₹ 35,000/-. Once the respondent-wife has made a specific averment with regard to capacity of the petitioner then onus shift upon the husband-petitioner to prove that he does not have sufficient means to pay maintenance. The petitioner has not brought on record his income-tax returns and has not rebutted the averments with regard to his income. Mere denial to earn anything is not a ground to deny maintenance. It is only in case the wife is unable to maintain herself, then maintenance is to be paid by the husband. The contention that the petitioner is not earning

anything is not sustainable as it is unbelievable that an able bodied person that too having technical education is not in a position to earn anything. Even the petitioner-husband has not bothered to pay some of the amount as maintenance till the filing of the present petition, whereas, grant of interim maintenance is an interim measure which has been awarded by the Court on the basis of income of petitioner-husband. There is nothing on record to show that respondent-wife has any independent source of income. It has been held in **Rajwinder Kaur Vs. Harwinder Singh** 2014 (2) Law Herald 1312 that appropriate maintenance commensurate with the needs of wife keeping in view the paying capacity of her husband, which is a legitimate right of the wife and same should not be denied to her. No element of greed should be seen into genuine needs of the wife.

Keeping in view the facts as well as law position discussed above, there is no merit in the contentions raised by learned counsel for the petitioner and no interference is required in the impugned order. Accordingly the present petition being devoid of any merit is hereby dismissed.

February 26, 2016
pooja

(DAYA CHAUDHARY)
JUDGE