

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

CRM-M-19214-2016

Date of decision: 03.11.2017

Rajesh Goyal

...Petitioner

Versus

Dimple

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Mahir Sood, Advocate
for the petitioner.

Ms. Dimple, respondent in person.

JAISHREE THAKUR, J.

1. The instant petition has been filed under Section 482 Cr.P.C seeking to challenge orders dated 29.01.2016 (Annexure P-10) whereby the petitioner has been directed to make payment of arrears of interim maintenance @ of Rs. 20,000/- per month in terms of order dated 30.10.2014 and also to challenge order dated 25.03.2016 (Annexure P-12) passed by the Additional Sessions Judge, Bathinda whereby the revision petition filed against the said order has been dismissed.

2. To understand the controversy involved herein, it would be necessary to delineate upon the facts of the case. The petitioner Rajesh Goyal married the respondent Dimple Goyal as per Hindu rites and ceremonies on 19.10.2012. On account of matrimonial dispute between the parties, bitter litigation commenced. The respondent got an FIR No. 54 dated 25.09.2013 registered under Sections 498-A and 406 of the Indian Penal

CRM-M-19214-2016

Code at Police Station Women Cell, District Bathinda. She also filed a petition for divorce on the grounds of cruelty, which petition was decreed ex-parte by judgment and decree dated 04.02.2015. The respondent also instituted an application under Section 125 Cr.P.C. for grant of interim maintenance on 02.11.2013. Since the petitioner did not appear, he was proceeded ex-parte by an order dated 17.12.2013 which order was challenged and the ex-parte proceedings were set aside by an order dated 14.08.2014. Thereafter, the JMIC, seized of the matter, directed the petitioner to make a payment of Rs. 20,000/- per month as interim maintenance from the date of application by an order dated 30.10.2014. This order, directing payment of interim maintenance, was challenged by the petitioner by filing a criminal revision before the Additional Sessions Judge which revision was dismissed as withdrawn by an order dated 11.03.2015, since the main application under Section 125 Cr.P.C. had been allowed by the JMIC on 30.01.2015. As the order dated 30.01.2015 was an ex-parte order directing the petitioner to pay a sum of Rs. 25,000/- per month to the respondent from the date of application as also litigation expenses to the tune of Rs. 15,000/-, the same was challenged in a Revision Petition No. 14 dated 24.03.2015 before the Additional Sessions Judge, Bathinda. The Additional Sessions Judge by an order dated 24.11.2015 set-aside the impugned order and directed the parties to appear before the trial Court giving one effective opportunity to the petitioner (respondent revisionist) to contest the application under Section 125 Cr.P.C. Since there was non-compliance of the order dated 30.10.2014, which had allowed interim maintenance @ of Rs. 20,000/- per month, to be paid to the complainant wife, an application

CRM-M-19214-2016

dated 15.12.2015 under Section 128 Cr.P.C. for recovery of arrears of maintenance was preferred. Reply was filed to the said application in which *inter alia* a specific plea had been taken that the respondent wife would not be entitled to maintenance as she had already received a sum of Rs. 10 Lakh before the Supreme Court. This application was contested and by an order dated 29.01.2016, a direction was issued to pay the arrears of maintenance. This order was again challenged by the petitioner; however, the revision petition was dismissed on 25.03.2016 by the Additional Sessions Judge, Bathinda (Annexure P-12). Aggrieved against the order directing the petitioner to pay arrears of interim maintenance @ of Rs. 20,000/- per month, and dismissal of the revision petition, the instant petition has been filed.

3. Learned counsel for the petitioner urges that the respondent wife is not entitled to grant of any interim maintenance as has been assessed by the JMJC, Bathinda. It is contended that the petitioner herein has already paid a sum of Rs. 10 Lakhs to the respondent under the orders of the Supreme Court, which amount has been withdrawn by her. It is argued that without taking into consideration the facts of the case or assessing the income of the petitioner, who is not holding a job, interim maintenance should not have been assessed at Rs. 20,000/- per month. It is also submitted that the marriage subsisted for a very short period and it is the respondent herself who left the matrimonial home and obtained a decree of divorce and, therefore, having left the matrimonial home herself, she would not be entitled to any maintenance. It is also argued that maintenance is to be awarded under Section 125 Cr.P.C in a given situation, if the complainant is

CRM-M-19214-2016

not in a position to maintain herself, and after having received a sum of Rs. 10 Lakhs, it could not be said that she is destitute. It is also argued that the respondent herein is a qualified teacher and has a job of Rs. 30,000/- per month, whereas the petitioner is jobless and does not have any landed property in his name.

4. *Per contra*, the respondent, who appears in person, argues that the petitioner herein is liable to pay the interim maintenance as has been awarded by the JMIC in its order dated 30.10.2014. It is argued that the petitioner herein is a man of means as would be reflected in the matrimonial advertisement issued. It is also argued that the petitioner, while giving a statement in proceedings initiated against him, had submitted that he along with his brothers were joint in residence and in business. It is argued that the petitioner herein has a share in a petrol station and, therefore, is a man of substantial means. The respondent also relies upon an affidavit filed by the petitioner before the JMIC, Bathinda, in proceedings initiated under Sections 498-A and 406 of the IPC, in which the petitioner himself, in support of his bail application, has averred that he, being a man of means, will not abscond. The respondent argues that the sum of Rs. 10 Lakhs, received by her, were pursuant to the orders passed by the Supreme Court in SLP No. 4577 – 4578 of 2014 arising out of a judgment and order dated 29.05.2014 passed by this High Court which had been filed seeking anticipatory bail since there had been no recovery of gold/dowry articles.

5. I have heard the counsel for the parties and have also perused the pleadings in this case.

CRM-M-19214-2016

6. The short question before this Court is whether the petitioner herein is liable to pay interim maintenance as assessed by the JMIC, Bathinda by its order dated 30.10.2014 ?

7. Section 125 of the Criminal Procedure Code, 1973 has been enacted in a form of a beneficial legislation which provides an effective remedy to protect women, children and parents when they are not in a position to maintain themselves. The term 'wife' also includes a divorced wife and, therefore, the respondent herein is entitled to seek maintenance, if it can be established that she is unable to maintain herself. In ***Chanmuniya vs. Virender Kumar Singh Kushwaha and another, 2011 (1) SCC 141***, Hon'ble Supreme Court held as under:

23. Again, in Vimala v. Veeraswamy [(1991) 2 SCC 375], a three-Judge Bench of this Court held that Section 125 of the Code of 1973 is meant to achieve a social purpose and the object is to prevent vagrancy and destitution. Explaining the meaning of the word 'wife' the Court held:

"3...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. When an attempt is made by the husband to negative the claim of the neglected wife depicting her as a kept-mistress on the specious plea that he was already married, the court would insist on strict proof of the earlier marriage. The term 'wife' in Section 125 of the Code of Criminal Procedure, includes a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried. The woman not having the legal status of a wife is thus brought within the inclusive definition of the term 'wife' consistent with the objective... "

8. The argument raised by the counsel for the petitioner that the respondent has received a sum of Rs. 10 Lakhs in terms of the SLP order and, therefore, cannot claim maintenance, is not sustainable. The amount as received under the orders of the Supreme Court was in order to secure

CRM-M-19214-2016

anticipatory bail. In fact, the petitioner herein had applied for grant of anticipatory bail in proceedings initiated under the FIR registered under section 406/498A IPC. After bail was rejected by this Court, he appeared before the Supreme Court and it is only thereafter that the respondent herein was given a sum of Rs. 10 Lakhs.

9. The JMIC, Bathinda has awarded a sum of Rs. 20,000/- to be paid as interim maintenance under Section 125 Cr.P.C. The contention of the petitioner that the respondent was an educated lady having a Bachelor Degree, a Degree in Education, Diploma in Tourism was noted and thereafter it was held that having a good qualification does not mean that she is capable of maintaining herself. The plea of the petitioner that he didn't have a bungalow or plot or was running any petrol pump was not taken into account while determining the liability of the petitioner to make a payment of Rs. 20,000/- per month from the date of application. Undeniably, the petitioner herein has a moral obligation and responsibility to maintain the respondent even though she is his divorced wife. The plea that she left her matrimonial home of her own accord, and thus would not be entitled to claim maintenance, cannot be taken into account since there were adequate reasons for her to leave her matrimonial home. The petitioner in his wisdom did not deem it fit to contest the divorce petition filed alleging cruelty.

10. However, while determining interim maintenance, the Court has necessarily to arrive at a determination about the earning capacity of the person from whom it is claimed. It is also true that an exact determination cannot be made, even then interim maintenance cannot be fixed capriciously. These proceedings are summary in nature and the matter has to be decided

CRM-M-19214-2016

on the basis of some averments/pleadings/documents supported by the parties. In the matter of *Bharat Hegde vs. Smt. Saroj Hegde, 140 (2007) DLT 60*, a thumb rule was laid out for the Courts to follow where the parties do not come forward with their exact income. It was held that while determining interim maintenance/maintenance, the status of the parties, reasonable needs of the claimant, the independent income and property of the claimant, the number of persons, the non-applicant has to maintain, the amount of aid that should be given to an applicant-claimant to live in a similar life style as he/she enjoyed in the matrimonial home, non-applicant's liabilities, payment capacity of the non-applicant and the amount awarded are to be taken into consideration.

11. Recently, a similar matter came up before the Supreme Court In *Manish Jain Vs. Akanksha Jain, Civil Appeal No. 4615 of 2017* arising out of *SLP (C) No.7670 of 2014* reported as *2017 (2) R.C.R. (Civil) 682*. A matrimonial dispute arose between the parties and the wife filed a divorce petition along with an application seeking interim maintenance in proceedings under section 24 of the Hindu Marriage Act 1955. The wife claimed a sum of rupees Rs.4,00,000/- per month and also a sum of Rs.80,000/- to meet litigation expenses during the pendency of the divorce petition, on the ground that she did not have any source of income to maintain herself and that she is dependent upon others for her day to day needs and requirements. The husband contested the application while submitting that his wife was well educated and that the family business had suffered a severe setback. Eventually the High Court fixed interim maintenance at Rs. 60,000/- per month which was challenged by the

husband. The Supreme Court reduced the interim maintenance awarded by the High Court to Rs. 25,000/- per month while holding as under:

“11. The Court exercises a wide discretion in the matter of granting alimony pendente lite but the discretion is judicial and neither arbitrary nor capricious. It is to be guided, on sound principles of matrimonial law and to be exercised within the ambit of the provisions of the Act and having regard to the object of the Act. The Court would not be in a position to judge the merits of the rival contentions of the parties when deciding an application for interim alimony and would not allow its discretion to be fettered by the nature of the allegations made by them and would not examine the merits of the case. Section 24 of the HM Act lays down that in arriving at the quantum of interim maintenance to be paid by one spouse to another, the Court must have regard to the appellant's own income and the income of the respondent.”

12. In the instant case, a perusal of the order dated 30.10.2014 does not reflect a judicious approach of the Court below while determining the interim maintenance to be paid. Other than noting contentions, there are no adequate reasons forthcoming as to what is the basis of determination of interim maintenance at Rs. 20,000/- per month. The plea taken that the petitioner had sold his property to pay a sum of Rs. 10 Lakhs to the respondent has also not been taken into consideration. Therefore, this Court is of the considered opinion that the interim maintenance as assessed is on the higher side.

13. The petitioner has specifically pleaded that he is not holding a regular job, does not own any land or property and is residing separately with his widowed mother. On the contrary, the respondent wife pleads that he is a man of substantial means, she relies upon an affidavit furnished by the petitioner himself while seeking bail which states that he has land and will not abscond, statement given by the petitioner that he is in a joint family

CRM-M-19214-2016

and the matrimonial advertisement saying that he is a businessman, to claim maintenance. None of these factors can be looked into at the present moment by this court, as evidence is still being led. However, without there being any sustainable proof, this Court finds that the interim maintenance awarded is excessive.

14. In view of above, the instant petition is partly allowed. The impugned orders dated 30.10.2014 & 29.01.2016 are modified to the extent that the interim maintenance payable would be assessed @ Rs. 10,000/- per month from the date of the application. The appellant-husband is directed to pay the arrears within eight weeks from today.

15. However, while disposing of this petition, it is made clear that the petition under Section 125 Cr.P.C is to be decided by taking all parameters into account as discussed above and the JMIC is not to be influenced by the order of this Court determining interim maintenance @ Rs. 10,000/- per month. In case the final maintenance is determined to be lesser than Rs. 10,000/- per month, excess payment made same shall be adjusted against future payments.

Let a copy of this order be dispatched to the respondent at her given address.

November 03, 2017

Ansari

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No