

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

CRR(F) No.58 of 2014(O&M)

Date of decision: 07.03.2017

Meenu Mittal and anotherPetitioners

VERSUS

Sourabh GuptaRespondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. N.K. Bansal, Advocate for the petitioners.

Mr. Ashok K. Sharma, Advocate for the respondent.

REKHA MITTAL, J.

The petitioner-wife and minor daughter born out of the wedlock of the parties are before this Court to press their claim for enhancement of maintenance assessed by the Family Court, Ambala vide order dated 18.12.2013.

Admittedly, Meenu Mittal- petitioner No.1 was married with respondent on 22.11.2009. Out of the wedlock, minor daughter Anvi was born on 24.01.2011. The petitioners claim maintenance on the plea that respondent has refused and neglected to maintain them and they are entitled to maintenance at the rate of Rs.30,000/- per month besides cost of litigation as the respondent is working as a Senior Engineer in TATA Consulting Engineers, Bombay at a salary of Rs.80,000/- per month.

After having heard counsel for the parties, in the light of materials on record, the trial Court held the petitioners entitled to maintenance at the rate of Rs.15,000/- per month from the date of order i.e.

Rs.10,000/- for petitioner No.1 and Rs.5,000/- for petitioner No.2. In addition, they were held entitled to litigation expenses to the tune of Rs.1,100/-.

The petitioners have sought modification of the order passed by the trial Court on three counts: (i) they are entitled to get maintenance from the date of application in place of date of order; (ii) maintenance assessed by the trial Court is liable to be enhanced in view of the document Ex.P9 proved by Sh. Vishal Dutta PW-2; (iii) litigation expenses awarded by the trial Court are inadequate. The petitioners are entitled to litigation expenses in the present proceedings as well.

To substantiate contention of the petitioners for enhancement of maintenance, counsel would submit that the trial Court has assessed maintenance by taking into consideration salary of the husband at the rate of Rs.53,714/- per month whereas salary of the husband is Rs.7,67,688/- per annum that comes to approximately Rs.64,000/- per month. For this purpose, counsel has invited attention of the Court towards contents of details of emoluments reflected in column [E] wherein an amount of Rs.1,23,120/- is paid towards Individual Component (IC) per annum making computed CTC to the tune of Rs.7,67,688/- including computed fixed pay of Rs.6,44,568/- per annum. It is further submitted that the trial Court failed to take into consideration the amount paid towards Individual Component (IC) per annum and thus assessed salary of the respondent to the extent of Rs.53,714/- on the basis of average of 12 months in regard to pay of Rs.6,44,568/- per annum.

With regard to plea of the petitioners for grant of maintenance

from the date of application in place of date of order, counsel would submit

that the trial Court has not at all adverted to the question if maintenance is to be paid from the date of application nor assigned any reason as to why the same should be paid from the date of order. It is vehemently argued that once the trial Court has arrived at a conclusion that the respondent-husband has refused to maintain the petitioners and he is liable to pay maintenance at the rate of Rs.15,000/- per month, there was no reason to confine their claim for maintenance at the rate of Rs.4,000/- per month from the date of application till the date of decision particularly in the circumstances that there is no delay attributable to the petitioners for taking the proceedings to its logical end.

Counsel for the respondent, on the contrary, has opposed the prayer either for enhancement of maintenance or grant of maintenance from the date of application. However, he has submitted that the petitioners may be awarded reasonable amount towards litigation expenses both in regard to the proceedings before the trial Court as well as this Court.

To contest claim of the petitioners for maintenance from the date of application, he has referred to judgment of Hon'ble the Supreme Court of India **Shail Kumari Devi and another Vs. Krishan Bhagwan Pathak @ Kishun B. Pathak, 2008(3) RCR (Criminal) 842.** Further reference has been made to judgment of the Calcutta High Court **Amit Kumar Das Vs. Basanti Giri and another, 2011(3) RCR (Criminal) 341.**

It has further been argued that as per testimony of PW-2 Sh. Vishal Dutta, Senior Executive Administration from TATA Consulting Engineers Ltd., monthly salary of the respondent is Rs.53,714/- and per

annum salary is Rs.6,44,568/-. According to counsel, the trial Court has rightly taken into consideration salary at the rate of Rs.53,714/- for assessing maintenance.

I have heard counsel for the parties, perused the paper-book and the original records.

Before advertng to the submissions made by counsel for the parties, it is appropriate to deal with the judgments cited by counsel for the respondent. A relevant extract from paras 46 and 47 of the judgment in

Shail Kumari Devi's case (supra) reads as follows:-

“46. Again, maintenance is a right which accrues to a wife against her husband the minute the former gets married to the latter. It is not only a moral obligation but is also a legal duty cast upon the husband to maintain his wife. Hence, whenever a wife does not stay with her husband and claims maintenance, the only question which the Court is called upon to consider is whether she was justified to live separately from her husband and still claim maintenance from him? If the reply is in the affirmative, she is entitled to claim maintenance. It is, therefore, open to the Magistrate to award maintenance from the date of application and there is nothing which requires recording of 'special reasons' though he must record reasons as envisaged by sub- section (6) of Section 354 of the Code in support of the order passed by him.

47. We, therefore, hold that while deciding an application under Section 125 of the code, a Magistrate is required to record reasons for granting or refusing to grant maintenance to wives, children or parents. Such maintenance can 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. For awarding maintenance from the date of the application, express order is necessary. No special reasons, however, are required to be recorded by the Court. In our Judgment, no such requirement can be read in sub section (1) of Section 125 of the Code in absence of express provision to that effect.”

Perusal of para 47 would make it evident that for awarding maintenance from the date of application, express order is necessary. No special reasons, however, are required to be recorded by the Court. Meaning thereby, if the maintenance is to be awarded from the date of application, it must be specifically mentioned in the order.

The Calcutta High Court in **Amit Kumar Das's case** (supra) has culled out certain circumstances where the Court may grant maintenance from the date of application namely (i) where the applicant is not in receipt of any interim maintenance (ii) where the applicant shows the dire need of money for the purpose of maintaining herself for which she had to raise debt during the period when the application had been pending (iii) where disposal of maintenance application is inordinately delayed because of dubious method adopted on the part of the opposite party by raising a vexatious plea of denial of marriage or paternity of the child or for some other frivolous grounds of similar nature or the proceeding is being protracted because of the deliberate manoeuvring by the opposite party.

The Court has held in para 23 of the judgment that the trial Magistrate is bound to record reasons justifying his decision to award maintenance from the date of application in a maintenance proceeding as mandated by Hon'ble the Apex Court in **Shail Kumari Devi's case** (supra) and the learned trial Court's failure to record reasons in support of grant of maintenance from the date of application would render such direction invalid in the eye of law. It appears that this observation of the Calcutta High Court runs contrary to what has been held by Hon'ble the Apex Court in **Shail Kumari Devi's case** (supra). As has been mentioned

hereinbefore, Hon'ble the Supreme Court has held that no special reasons are required to be recorded by the Court for awarding maintenance from the date of application, though an express order in this regard is necessary.

In the case at hand, the question that arises for consideration is whether the petitioners can be denied maintenance at the rate of Rs.15,000/- per month from the date of application merely because they were awarded interim maintenance at the rate of Rs.4,000/- per month. To answer this, it is necessary to examine the order of interim maintenance passed by the trial Court on 16.03.2013. It has been noticed by the Court that applicant/wife has pleaded income of the respondent at Rs.80,000/- per month being Senior Manager in a reputed concern but the respondent has not preferred to mention his income though he has admitted that he is working as an Engineer in a reputed concern. There is no documentary proof on record with regard to income of the respondent/husband but being an Engineer in a reputed concern, earnings can be assessed more than Rs.15,000/- per month. Accordingly, by taking into account that income of the respondent/husband, he was directed to pay a sum of Rs.4,000/- per month to the applicant/wife for interim maintenance from the date of filing of the application.

The crucial issue before this Court is as to whether the respondent can be allowed to take advantage of his own lapse by not disclosing his income much less producing documentary evidence on account of which the Court had to assess his income less than 1/4th of his actual income. If such a plea of the respondent is accepted, it would amount to putting premium over concealment of a fact by the respondent-husband. As per settled position in law, a party in possession of the best

evidence, which would throw light on the issue in controversy, has an obligation to produce that evidence, failing which an adverse inference can be drawn by the Court. Similarly, a person guilty of concealing material fact from the Court is not entitled to indulgence of the Court. I would hasten to add that the principle with regard to drawing of an adverse inference is generally attracted in civil proceedings but even the proceedings under Section 125 Cr.P.C. are quasi civil in nature as has been held by Hon'ble the Supreme Court in **Vijay Kumar Prasad Vs. State of Bihar, 2004(2) RCR (Criminal) 470**. Under the circumstances, I find myself unable to accept the submissions made by counsel for the respondent that the petitioners can be denied their right to get adequate maintenance from the date of application merely because petitioner No.1 was allowed interim maintenance at the rate of Rs.4,000/- per month.

There is nothing on record suggestive of the fact that petitioner No.1 has any source of income. She has been residing in her parental house at the mercy of her parents. In view of the above, maintenance assessed by the Court below is liable to be paid from the date of application particularly in the circumstances that there is no reason to deny that benefit during the period of pendency of proceedings before the trial Court.

This brings the Court to the quantum of maintenance. Indisputably, the trial Court has taken into consideration salary of respondent at the rate of Rs.53,714/- per month. Sh. Vishal Dutta PW-2 in his examination in chief has deposed "as per Ex.P9 total CTC/salary package of Sh. Sourabh Gupta is Rs.7,67,688/-. Previously, Sh. Sourabh Gupta was employed as Assistant Manager." No doubt, in cross

examination the witness has deposed that his monthly salary is Rs.53,714/- and annual salary is Rs.6,44,568/- but he did not explain that if the salary package is Rs.7,67,688/- why there is difference of more than Rs.1,00,000/- between his annual salary and salary package. There is nothing on record suggestive of the fact that any statutory deduction was being made from salary of which benefit can be extended for the purpose of assessment of maintenance. Taking into consideration CTC/salary package of the respondent, his monthly salary comes to Rs.63,974/-. By considering monthly salary of the respondent at Rs.63,974/-, maintenance assessed by the trial Court is liable to be enhanced to the tune of Rs.18,000/- per month i.e. Rs.12,000/- per month for petitioner No.1 and 6,000/- per month for petitioner No.2.

Qua claim of the petitioners for litigation expenses, the petitioners shall be entitled to an amount of Rs.10,000/- towards litigation expenses excluding Rs.1100/- allowed by the trial Court and a sum of Rs.11,000/- towards litigation expenses of the present proceedings.

In view of what has been discussed hereinbefore, the petition is partly allowed. The petitioners shall be entitled to maintenance at the rate of Rs.18,000/- per month i.e. Rs.12,000/- per month for petitioner No.1 and 6,000/- for petitioner No.2 from the date of filing of the application before the trial Court. They shall be entitled to litigation expenses in the aforesaid terms.

MARCH 7, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no