

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

Crl. Revision (F) No. 263 of 2015 (O&M)
Date of decision: November 20, 2017

Smt. Neena Devi and another

...Petitioners

Versus

Dhan Raj

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Amardeep Hooda, Advocate
for the petitioners.

None for the respondent.

JAISHREE THAKUR, J.

1. The petitioners herein seeks to challenge order dated 23.07.2015 passed by District Judge, Family Court, Rohtak, assessing maintenance under Section 125 of the Code of Criminal Procedure (for short '**the Act**') to the petitioners at ₹7,000/- per month as an inadequate amount.

2. Briefly stated, Neena Devi, the petitioner herein, filed a petition under section 125 of the Code seeking maintenance for herself and her minor son born out of her wedlock with the respondent Dhan Raj. An application was also preferred for interim maintenance on the ground that she had no source of income and was unable to maintain herself and the minor child. It was alleged that the respondent is employed in the Defence sector and is getting a net salary of ₹25,205/- per month. It was alleged that she was turned out of her matrimonial home after being subjected to sever

beating. It was stated that the respondent did not have any other liability or responsibility to shoulder, except maintain the complainant and his minor child. A reply was filed to the interim application seeking maintenance, in which it was stated that the complainant had left the society of the petitioner without any reasonable cause and was capable of supporting herself by stitching clothes, therefore, would not be entitled to any maintenance as claimed. In fact, she was earning ₹15,000/- per month. It was also argued that the brother of the petitioner had inflicted severe beatings to his family members and that his brother was missing. The District Judge, Family Court, while noting the contentions raised, assessed the income of the respondent husband to be ₹25,205/- per month and on this basis directed that the petitioners herein would be entitled to ₹7,000/- per month as interim maintenance. Out of the said amount, ₹4,000/- per month was to be given to the complainant wife and a sum of ₹3000/- to the minor child from the date of the application. Aggrieved the instant petition has been filed.

3. Mr. Amardeep Hooda, learned advocate appearing on behalf of the petitioner, argues that the District Judge has erred in awarding maintenance on the lower side. It is also submitted that the petitioners are entitled to a higher amount of maintenance. It is argued that the petitioner No.1 has the responsibility of bringing up her minor child as well who requires a food, lodging and education.

4. I have heard the counsel for the petitioner and have also gone through the pleadings. No one has put in an appearance on behalf of the respondent, despite service, as noted by order dated 15.1.2016.

5. Section 125 of the Code of Criminal Procedure was enacted as

a social measure to put an end to the agony, anguish, financial suffering of a woman who left her matrimonial home for no fault of hers, so that some suitable arrangements can be made by the Court in order for her to sustain herself and also her children. These proceedings are in the form of summary in nature and the matter has to be decided on the basis of some averments/pleadings/documents supported by the parties.

6. Since there is no dispute about the complainant/petitioner No. 1 being the legally wedded wife and petitioner No. 2, the minor child born out of this wedlock, the respondent has a moral and legal obligation to support them. In the instant case, the District Judge took note of the fact that the petitioner was working in the defence sector and had a net pay of ₹25,205/- per month. It is on this basis that an amount of ₹7,000/- has been assessed as interim maintenance, which cannot be said to be on the higher side. In the opinion of this court, the interim maintenance as awarded is wholly inadequate, taking into account the rising prices and cost of living. If the net income of the husband is ₹25,205/- per month, then the amount of interim maintenance assessed is inadequate taking into account that there are two persons who have to be maintained, while the respondent husband has no other liability or responsibility. Therefore, in the fitness of things, it can safely be said that the interim maintenance should be enhanced to at least ₹12,000/- per month from the date of application. This would amount to $\frac{1}{4}$ th of the salary being given to each of the petitioners and whereas the respondent would retain $\frac{1}{2}$ of his salary. The respondent is stated to be working with the defence, meaning thereby he would also be entitled to a lot of other free benefits. Needless to say the interim maintenance fixed is

provisional and subject to evidence being led by both the parties.

7. This court is of the considered opinion that interim maintenance is liable to be enhanced to ₹12,000/- per month from the date of application. The arrears should be cleared within a period of two months from receipt of certified copy being served upon the respondent.

8. The amount of interim maintenance assessed by this court is provisional and subject to final adjudication by the courts below, who in turn has yet to decide the question of maintenance and the liability to pay while taking into account the earning capacity, whether the respondent wife herself is earning. It is made clear, while disposing of the petition, that the Family Court is not be influenced by the order of this Court determining interim maintenance @ ₹12,000/- per month .

9. Petition stands allowed in the aforesaid terms

November 20, 2017
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned Yes.
Whether reportable No.