

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

**CRR (F) No. 275 of 2015 (O&M)
Date of decision: 10.05.2017**

Jagdeep Kaur and another

...Petitioners

Versus

Narinder Pal Singh

...Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Pritam Saini, Advocate,
for the petitioners.

Mr. Abhilaksh Grover, Advocate,
for the respondent.

Ritu Bahri, J.

This petition has been filed against the order dated 28.09.2015 passed by the District Judge, Family Court, Ambala, awarding maintenance under Section 125 Cr.P.C. at the rate of Rs.3500/- per month in favour of Simran-petitioner No.2 and dismissing the petition qua petitioner No.1-wife (Jagdeep Kaur).

Notice of motion was issued in this case on 13.10.2015 by observing that the salary of respondent-husband, who is working as Chief Executive Engineer in Infosys, was above Rs.2 lacs per month, whereas petitioner No.1-wife was earning approximately a sum of Rs.31,000/- per month. After issuing notice of motion, the matter was referred to the Mediation and conciliation Centre of this Court. On 30.03.2017 with the

were held at length, but no amicable settlement could be arrived at between the parties.

Today, learned counsel for the respondent has handed over a draft of Rs.30,000/- to learned counsel for the petitioners for admission of his minor child.

Heard, counsel for the parties.

Documents Ex.P1 to Ex.P-28 with regard to the salary of the respondent are not in dispute between the parties. As per salary slip Ex.P28, gross salary of respondent-husband is Rs.2,26,449/- and after deductions, net pay comes to Rs.1,53,160/-. On the other hand, petitioner No.1-wife is serving in Centre for Development of Advanced Computing (CDAC), a scientific society of the Ministry of Communications and Information Technology, Government of India. As per salary slip for the month of April, 2015, she was getting gross salary of Rs.39,989/- per month and after deduction of Rs.4219/-, her net pay was Rs.35,770/-. Apart from this, she was getting House Rent Allowance of Rs.3042/- per month, Children Education Allowance of Rs.18,000/- per month and Diwali Bonus of Rs.3500/-. Accordingly, her average carry home salary is about Rs.40,000/- per month.

Amit Kumar, Clerk (RW-1) from SA Jain Senior Model School deposed that Simran Kaur-petitioner No.2 was studying in his school. She was paying the school fees to the tune of Rs.1700/- per month. During cross-examination, this witness has stated that the books required by the students were not accounted for in the fee. Keeping in view the facts and circumstances of the case, Rs.3500/- per month have been awarded to the minor child (petitioner No.2).

In the present case, the facts not in dispute are that the gross monthly salary petitioner No.1-wife was Rs.39,989/- and as per salary slip Ex.P28, gross salary of respondent-husband is Rs.2,26,449/-. After deduction, he was getting net salary of Rs.1,53,160/-.

Learned counsel for the petitioners has referred to the judgments passed by this Court in **Sita Devi alias Sita Verma Vs. Vijay B. Verma**, 2014 (1) RCR (Civil) 1018, **Chanchal Mehta Vs. Supriya Mehta**, 2016 (3) RCR (Criminal) 727, **Vishal Saxena Vs. Swati Bhatnagar**, 2016 (2) RCR (Civil) 1022 and another judgment passed by the Delhi High Court in **Vikaas Ahluwalia Vs. Simran Ahluwalia**, 2013 (37) RCR (Civil) 520, to contend that even though the wife is earning, she cannot be denied maintenance in the proceedings under Section 125 Cr.P.C.

On the other hand, learned counsel for the respondent has referred to the judgment passed by Hon'ble the Supreme Court in **Bhagwan Dutt Vs. Smt. Kamla Devi and another**, 1975 AIR (SC) 83 as well as judgments passed by this Court in **Sikandar Vs. Kamlesh**, 1995 (3) RCR (Criminal) 782 & **Naresh Vs. Rani**, 2016 (1) PLR 538 and another judgment passed by the Madras High Court in **Manokaran alias Ramamoorthy Vs. M. Devaki**, 2003 (3) RCR (Civil) 760, to contend that the Court has to apply its mind with regard to earning capacity of the wife.

The question for grant of maintenance under Section 125 Cr.P.C. came up for consideration before the Bombay High Court in case **Mustafa Shamsuddin Shaikh Vs. Shamshad Begum Mustafa Shaikh**, 1991 (3) RCR (Crl.) 363. In this case, it was held that in proceedings under Section 125 Cr.P.C., it was not necessary for the Court to ascertain as to who was in the wrong and whether the wife was guilty of leaving the

matrimonial house without any reason. Even assuming that the wife is in the wrong while leaving the house, she cannot be deprived of maintenance when husband contracts second marriage and that fact by itself entitles her to live separately. Proceedings under Section 125 Cr.P.C. should not be confused with the matrimonial proceedings between the parties. A right to claim maintenance under the Code is not dependent upon who was right and who was wrong. The Magistrate is duty bound to award maintenance once it is found that the wife is unable to maintain herself and her husband has means but still neglects or refuses to maintain the wife. The conduct of the wife at the time of leaving the house is wholly irreverent and the Magistrate must concentrate on the facts and circumstances existing on the date of passing order on application filed under Section 125 of the Code.

In **Sita Devi alias Sita Verma's** case (supra), this Court had enhanced the interim maintenance awarded to the wife from Rs.31,000/- per month to Rs.1.50 lakhs per month keeping in view the financial status and standard of the husband, who owned a 4 star hotel. While enhancing the maintenance, it was observed as under:-

“5. All these facts are brought out only to apprise the status of parties. Section 24 of the Hindu Marriage Act provides for interim maintenance which will have a due consideration of the relative status of parties, reasonable wants of the individual paying capacity of the spouse and extent of resources held by the petitioner claiming maintenance. I must record the fact that status of the parties must be seen as persons belonging to the richer echelons and if she must conduct herself with dignity as a person she will have to be provided for herself by private transport by a car and must also have a house which depicts her status. The husband after all has the opulence of running a business which is a four star hotel in one of the prominent cities of Punjab. A husband who could extend luxury to visiting guests at his hotel will do well to keep his wife a tad higher in her standard of living. Considering all these details I am of the view that the maintenance paid @ Rs.30,000/- per month is not sufficient

and it has to be raised to Rs.1.50 lakhs per month as asked for. The payment of the amount will take effect from the date of filing of the petition before the Court below and the husband will not prosecute the case unless there is a compliance of the direction for payment of the past arrears and to continue to pay during the course of the proceedings.”

In Chanchal Mehta's case (supra), this Court was examining a case, where trial Court had granted interim maintenance at the rate of Rs.20,000/- per month to the wife. While dismissing a revision filed by husband against the interim maintenance, it was observed that inability to maintain herself is concrete condition for grant of maintenance to the wife and merely because she was earning and is highly qualified, cannot be a ground to reject her claim for maintenance. Similar view was taken by Hon'ble the Supreme Court in Sunita Kachwaha and others Vs. Anil Kachwaha, 2014 (4) RCR (Criminal) 831.

In the facts of the present case, it is not in dispute that as per salary slip Ex.P28, gross salary of respondent-husband is Rs.2,26,449/-. After deduction, he was getting net salary of Rs.1,53,160/- in April, 2015. Keeping in view this fact, trial Court has awarded maintenance at the rate of Rs.3500/- per month to minor child-petitioner No.2, even though mother of the child (petitioner No.1) was also earning approximate Rs.35,770/- per month (net salary) and she has to contribute towards maintenance of the child.

From the facts of the case, it is apparent that income of petitioner No.1-wife is almost five time less than the salary of respondent-husband. Apart from this, respondent-husband is staying with his father, who is also a pensioner. Meaning thereby, his father is not dependent upon him. Keeping in view the financial status of the respondent, his wife and

given maintenance of such a meagre amount, so that they can barely survive in the society. Petitioner No.1-wife also has a legal right to claim maintenance, if after separation she is being emotionally and financially neglected by her husband. She is giving 24 hours to bring up her child namely Simran-petitioner No.2. Apart from tuition fee, she is also required to give other source of happiness such as holidays, outing etc. The minor child has to grow in a positive and happy environment and for all this, Rs.3500/- per month is on the very lower side.

Keeping in view the income of respondent, the judgments cited by learned counsel for the respondents will not be applicable to the facts of the present case. In the peculiar facts and circumstances of the case, this Court is of the view that although, the respondent had made an FDR in the name of minor child-petitioner No.2, yet she is entitled to the higher maintenance every month for proper emotional and physical growth as a happy child. At the same time, petitioner No.1, who is getting a salary of Rs.35,000/- (approximately), is looking after her minor daughter. She (petitioner No.1) also has a right of maintenance in order to equalize the living standard of husband and wife keeping in view the salary of respondent-husband, whose net salary is more than Rs.1,50,000/- per month.

Resultantly, this petition is allowed and respondent-husband is directed to pay maintenance of Rs.30,000/- per month to petitioner No.1-wife and Rs.10,000/- per month to petitioner No.2-daughter from the date of the application.

10.05.2017
ajp

(RITU BAHRI)
JUDGE