

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

Crl. Revision (F) 245 of 2016 (O&M)
Date of decision: 13.11.2017

Parveen Kumar Sharma

...Petitioner

Versus

Babita Sharma and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Vikram Singh, Advocate,
for the petitioner.

Mr. Sushil Bhardwaj, Advocate,
for the respondents.

JAISHREE THAKUR, J.

1. The present revision has been filed seeking to challenge order dated 26.5.2016 passed by District Judge (Family Court), Karnal, directing the petitioner to pay ₹20,000/- per month as maintenance under Section 125 of the Code of Criminal Procedure (for short '**the Code**') to the respondents.

2. In brief the facts are, a marriage was solemnized between the petitioner and respondent No. 1 on 21.4.2015 as per Hindu rites and ceremonies at Karnal. The complainant became pregnant and gave birth to a girl child. FIR No. 40 dated 16.11.2015 was registered under Sections 323, 377, 498-A, 406 read with Section 34 of the IPC by the complainant against her husband and his family members alleging demand of dowry, cruelty harassment, physical abuse and illicit relations of her husband with other

women. The respondent/complainant approached the court seeking maintenance for herself and the minor daughter under Section 125 of the Code on the ground that she was not in a position to maintain herself. It was alleged that her husband, the petitioner herein, was working as a Chemical Engineer with Avinex Software (P) Ltd. in Jaipur and earning ₹1,25,000/- per month and she claimed ₹50,000 as maintenance for herself and her minor daughter. The petition was contested and after hearing the parties and relying upon case law, the District Judge (Family Court), Karnal, allowed *interim* maintenance of ₹20,000 per month payable from the date of the petition. The District Judge took the income of the petitioner to be ₹53,233/- per month. Aggrieved against the said order, the instant revision petition has been filed.

3. Mr. Vikram Singh, learned advocate appearing on behalf of of the petitioner, contends that the District Judge has erred while awarding of maintenance at ₹20,000/- per month. It is submitted that the complainant is not entitled to any maintenance as she left the matrimonial home on her own accord and launched false and frivolous F.I.R against him and his family members. It is also argued that the complainant herself is an engineer working in a private firm and, therefore, is capable of sustaining herself and her minor daughter. It is also argued that on account of a false FIR being registered against the petitioner, he was arrested which led to his services being terminated on 18.11.2015 itself and therefore the interim maintenance as assessed is not sustainable.

4. Per contra, Mr Sushil Bhardwaj, learned counsel appearing on

behalf of the respondents, argues that the petitioner herein is morally and legally bound to maintain his wife and his minor daughter. It is argued that the respondent wife left the matrimonial home on account of ill-treatment, demand of dowry, harassment etc. that was meted out to her and not of her own accord. It is argued that the petitioner is a Chemical Engineer and was drawing a handsome salary and, therefore, there is no infirmity in the orders of passed.

5. I have heard the counsel for the parties and have also carefully gone through the record of the case.

6. Admittedly, respondent No. 1 is the legally wedded wife of the petitioner and respondent No. 2 is their minor daughter. The District Judge held that the petitioner herein is liable to pay a sum of ₹20,000/- per month as maintenance towards the respondents being his legally wedded wife and the minor child, which maintenance has been challenged in the present proceedings.

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. 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 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.

8. In the case in hand, it was pleaded by the respondent/complainant that her husband was gainfully employed with Avinex Software (P) Ltd. and earning a sum of ₹1, 25,000/- per month. This statement was belied, as for the period 20.6.2015 to 1.12.2015 the bank account statement of the petitioner showed he was getting monthly salary of ₹53,233/-. The argument of the petitioner that he was out of a job on account of his incarceration was not considered in its true perspective while holding that it could not be believed he was sitting idle at home. Admittedly, the petitioner was relieved from his services from 18th of December 2015 and thereafter nothing seemed to have been placed on the record to show he was gainfully employed. Therefore, at best, the District Judge could have held that the petitioner being an able-bodied person is capable of earning ₹10,000 -/per month as a daily wager.

9. During the pendency of the proceedings in this court, the petitioner has got himself a job, as per the additional affidavit filed, with Chemline Adhesives and Coatings. A perusal of the appointment letter dated 08.07.2017 does not reflect the salary and simply mentions that the salary shall be as mutually agreed. As per the statement made in court, the petitioner is going to get the salary of approximately ₹21,000 odd per month.

10. Considering the fact that the petitioner was not earning ₹53,000/- per month as on the date the impugned order was passed, that is on 26.5.2016, and there was nothing on the record to substantiate his earnings, this court is of the opinion that the District Judge erred in awarding ₹20,000/- per month as interim maintenance. However, it also cannot be lost sight of that Section 125 of the Code has been enacted as the social and beneficial legislation to ensure that the wife, minor children, aged parents etc. are not left destitute. It is a moral and legal obligation of the husband/son to maintain his family which would also be applicable in the instant case. Taking this factor into account, the petitioner herein is liable to pay ₹8000/- per month as interim maintenance provisionally from the date of application to the respondents herein within a period of one month.

11. 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, the period the petitioner remained out of job and his current assignment, as well as decide the

question, 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 @ ₹8,000/- per month .

12. Petition stands allowed in the aforesaid terms.

13.11.2017
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No