

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

**CRM-M-3521-2014 (O&M)
Date of decision: 26.04.2018**

Abhishek Verma

...Petitioner

Versus

Vaishnavi Verma

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. D.K. Bhatti, Advocate,
for the petitioner.

Mr. H.S. Bhullar, Advocate,
for the respondent.

JAISHREE THAKUR, J.

1. The petitioner has filed this petition under Section 482 Cr.P.C seeking to set aside impugned orders dated 06.06.2013 by which the petitioner was directed to pay a sum of ₹ 4000/- as maintenance from the date of order and the order dated 07.11.2013 by which maintenance was made payable from the date of filing of the petition.

2. In brief, it was stated in the petition filed seeking maintenance that the petitioner Abhishek Verma promised to marry Khushboo and it is thereafter both got involved in a physical relationship. Out of this relationship, a female child was born on 28.07.2008. The family and friends of Khushboo Verma, tried to convince the petitioner herein to solemnize a marriage but to no avail. After the birth of the daughter, Khushboo Verma filed a petition under Section 125 Cr.P.C seeking maintenance for herself and the minor child on the ground that she had lost her job on account of her pregnancy and being unemployed was unable to maintain herself and the

minor. Along with the said application, interim maintenance was sought as well. The petition for grant of maintenance was contested on the ground that there is no relationship between the parties, while arguing that the petitioner- respondent has no source of income being confined in Model Jail, Chandigarh in criminal proceedings that had been initiated, in which he stood convicted. DNA analysis report was submitted showing the petitioner herein to be the biological father of the minor. The application for interim maintenance was disposed of with a direction to the petitioner to pay a sum of ₹ 500/- per month from the date of the application. Thereafter, on appreciation of the evidence, maintenance was allowed payable to the minor, Vaishnavi Verma @ ₹ 4000/- per month from the date of the order dated 06.06.2013. Khushboo Verma by a separate statement dated 05.06.2013 withdrew her petition claiming maintenance under Section 125 Cr.P.C. Aggrieved against the order of maintenance, two revision petitions were preferred. One revision was instituted by the petitioner herein challenging the order of maintenance being highly excessive, and the other revision was instituted by the minor Vaishnavi Verma claiming maintenance from the date of filing of the petition. The Sessions Judge, Chandigarh dismissed the petition as filed by the petitioner while allowing the modification in the petition filed by the minor to the extent that she would be entitled to get maintenance from the date of filing of the petition. Aggrieved against the said order, the instant criminal miscellaneous petition has been preferred.

3. Mr. D.K. Bhatti, learned counsel appearing on behalf of the petitioner contends that he was incarcerated on account of criminal proceedings initiated against him from August 2008 to March 2011 and,

therefore, while in custody, he did not have sufficient means to pay maintenance and, therefore, could not have been fastened with a liability to pay maintenance @ ₹ 4000/- per month, payable from the date of instituting the application under Section 125 Cr. P.C.

4. Per contra, Mr. H.S. Bhullar, learned counsel appearing on behalf of the respondent, Vaishnavi Verma contends that being the biological minor child of the petitioner, she is entitled to claim maintenance, while arguing that it is the moral and statutory duty of a father to maintain his child in order to meet her educational and daily expenses.

5. I have heard the counsel for the parties and with their able assistance have gone through the pleadings of the parties.

6. The petitioner herein had initially been directed to pay ₹ 4000/- per month as maintenance to the minor child, the respondent herein, from the date of the order i.e. 06.06.2013 which order was subsequently modified in a revision petition to make the maintenance payable from the date the petition under section 125 Cr.P.C claiming maintenance was instituted.

7. The DNA report furnished to the Court clearly establishes the petitioner to be the biological father of the respondent, Vaishnavi Verma. Section 125 Cr.P.C has been enacted to ensure that a wife, minor child (his legitimate or illegitimate minor child) or old-age parents are maintained and not subjected to vagrancy and destitution. Grant of maintenance has been perceived as a measure of social justice by the Courts and the said Section falls within the Constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It provides speedy remedy for supply of food court, clothing, shelter to the deserted family, while ensuring that the person fulfils his moral and legal obligation to support his family, be it a

minor child, wife or aged parents. Section 125 Cr.P.C. reads as :-

“125. Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct: Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means. Explanation.- For the purposes of this Chapter,-

(a) " minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875); is deemed not to have attained his majority;

(b) " wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every

breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowances remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made: Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due: Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing. Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No Wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

8. Is there any infirmity in the orders so passed by the Session Judge, Chandigarh modifying the order of maintenance, making it payable from the date of the petition as directed by JMIC, Chandigarh from the date of the petition?

9 Section 125 Cr.P.C. uses the term '*If any person having*

sufficient means neglects or refuses to maintain' his wife, minor children,

illegitimate or otherwise, aged parents, then a Magistrate of Ist Class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate. A son, father or husband cannot shirk his responsibility in maintaining his family and even if it is claimed that he is without a job, such person being an able bodied person has been held capable of doing a daily wagers job and earning accordingly.

10. The term '*sufficient*' has not been defined under the Code but in common parlance and as per the Oxford dictionary, the term '*sufficient*' has been defined as '*Adequate: Enough*'. The earnings of a person have to be taken into account while assessing the quantum of maintenance, while also keeping in mind the other liabilities of the person responsible for paying maintenance.

11. In the instant case, while deciding the interim application dated 06.06.2009 a sum of ₹ 500/- was awarded by an order dated 06.01.2010 and thereafter, the amount was enhanced by order dated 06.06.2013 to ₹ 4000/- per month payable from the date of the order. This order was modified to make it payable from the date of the application. The Sessions Judge, Chandigarh failed to take into account the facts of the instant case, wherein the petitioner was arrested in proceedings under FIR registered under Section 376 IPC in the year 2008. He remained in custody till he was granted bail in March 2011. As per the statement recorded, he was studying after his release and doing his MBA through correspondence and was wholly dependent upon his parents. The record summoned would show that the petitioner received wages while in custody from the month of October, 2009 onwards till the time of his release. As per the statement, half of the

sum earned while in custody was kept to be given to the accused on release from jail and the other amount was allowed for his expenses like canteen soap etc. The petitioner while in custody only earned a paltry sum, which is stated to be ₹ 3115/-, whereas the petitioner has been directed to pay a sum of ₹ 4,000/- per month from the date of the application. Since he was not holding a regular job on account of being in judicial custody, it cannot be said that the petitioner herein is guilty of shirking his responsibility towards his minor child. He certainly did not have the “*sufficient means*” at that point in time to pay maintenance @ ₹ 4000/- per month as has been allowed by the Session Judge, Chandigarh.

12. The respondent was born on 27.07.2009 and was awarded interim maintenance of ₹ 500/- per month from January, 2010 itself which would have been sufficient at that point in time, since she was only a few months old. The petitioner was 20 years of age and was a student of 4th year B. Tech engineering studying in Punjab Engineering College when he met mother of the respondent, who was aged 24 years and working with Reliance Company. He was in custody from August, 2009 till his release in March, 2011 and, therefore, even though the petitioner being able bodied and capable of earning livelihood in normal circumstance, was in a fashion handicapped, being in custody and restricted of free movement. There is no illegality in holding maintenance @ ₹ 4,000/- per month, but it should be from the date of the order. Therefore, in the facts and circumstances of the instant case, there is no justification in awarding maintenance from the date of petition.

13. In view of the discussion above, the order dated 07.11.2013 is hereby set aside while restoring the order of the Magistrate making the

payment of maintenance from the date of order i.e. 06.06.2013.

14. Petition stands allowed to that extent.

26.04.2018

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes.

Whether reportable

No.