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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 26.08.2022**Pronounced on: 20.09.2022**+ **CRL.REV.P. 980/2018****CHANCHAL VERMA**

..... Petitioner

Through: Ms. Pallavi Sharma Kansal,
Mr. Saurabh Kansal and
Ms. Ashu Chaudhary,
Advocates.

versus

ANURAG VERMA

..... Respondent

Through: Ms. Sunita Ravi Sharma,
Advocate.

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT**

S. No.	Particulars	Page No.
1.	Factual Background	2-5
2.	Submissions of learned counsels	5
3.	Section 125 Cr.P.C.	5-14
	i. Ingredients and objective	5-9
	ii. Interim maintenance under Section 125 Cr.P.C.	9-14
4.	Observations and findings	14-20
5.	Conclusion	20-22

**SWARANA KANTA SHARMA, J.**

1. The present revision petition has been filed, challenging the order dated 20.08.2018 passed by learned Principal Judge, Family Court, South-East District, Saket Courts, New Delhi whereby the petition for grant of interim maintenance filed by the petitioner was dismissed and *vide* same order, the application filed under Section 127 Cr.P.C. by the respondent was allowed.

Factual Background

2. The marriage between the Petitioner and the Respondent was solemnized on 21.01.2014. Later, disputes arose between them and the petitioner was sent back to her parental home on 20.07.2014. The petitioner filed petition under Section 125 Cr.P.C. on 05.12.2016 seeking grant of interim maintenance.

3. During the course of proceedings under section 125 Cr.P.C., the respondent informed the court that he was earning Rs. 39,000/- per month and was willing to pay Rs. 8,000/- per month as interim maintenance to the petitioner, till disposal of the application for grant of interim maintenance. The operative portion of the consent order dated 09.08.2017 reads as under:

“...I have deliberated with the parties, respondent informs that he is earning Rs. 39,000/- per month and he is ready to pay Rs. 8,000/- per month as an interim measure for the Petitioner without prejudice to his rights and contentions till the disposal of the interim maintenance.

Request considered and allowed. The Respondent shall pay Rs. 8,000 /- per month for the petitioner and the said amount



shall be transferred to the bank account of the petitioner. Said amount shall be payable by respondent on or before 25th day of each month starting from August, 2017 till the disposal of the interim maintenance application”

4. On 09.03.2018, the respondent filed an application under Section 127 Cr.P.C. seeking modification of the order dated 09.08.2017, on the grounds that, firstly, the petitioner had not disclosed before the court that she was earning and had a source of income, and secondly, that the respondent's financial responsibilities and liabilities had increased manifold. Therefore, he prayed for the modification of the order to the extent of discharging him of his liability to pay maintenance as agreed by him earlier and as recorded in the order dated 09.08.2017.

5. The learned Trial Court *vide* order dated 20.08.2018 decided both the applications, whereby the petitioner's application under section 125 Cr.P.C. was dismissed and the respondent's application under section 127 Cr.P.C. was allowed. The observations made in the said order are as under:

“...Now applying this above said principals in the case in hand, the application/wife in her affidavit has stated that she is not working and earning but in her petition in Para 44 she herself has mentioned that she is working as Attendant in the Batra Hospital Nursing Home and earning Rs. 6000/- per month. Even her reply to the application U/s 127 of Cr.PC filed by the respondent/husband is quite evasive and she has nowhere disclosed, whether she is working or not. She has only filed one statement of account of Corporation Bank of 2015 which shows only two transactions. It is a well settled principal of law that those coming to the Court must come to the Court with clean hands but it seems that petitioner/wife herself has tried to play fraud upon the Court as in her petition u/s 125 Cr.P.C she has stated that she started



working after the marriage and earning Rs. 6000/- per month but in her affidavit, she has completely denied this fact and has stated that she is not working. Non – applicant/husband has stated that he has also taken housing loan for which he is regularly paying EMI of Rs. 23,000/- per month. Therefore, his liability to this effect cannot be ignored by this Court. Though, petitioner/wife came to the Court seeking maintenance from the respondent/husband but despite the orders of the Hon'ble High Court again and again she herself has not complied with the directions of the Court and she has not filed her account statement. In his application U/s 127 of Cr.P.C, the respondent/husband has taken plea that applicant/wife was previously working in Jeewan Hospital but in reply there is no specific denial. Moreover, a certificate to this effect issued by the Jeewan Nursing Home shows that Chanchal was working in the hospital labour room. This certificate is dated 15.12.2013 which is much prior to the filing of the present petition and thereafter, petitioner herself has admitted that she started working in Batra Nursing Home after the marriage. Though she has stated her income to be Rs. 6000/- per month but it may be mentioned that even the minimum wages for a unskilled worker is more than that. For working as an attendant in the labour room, it cannot be accepted that the nursing home will not even provide the minimum monthly wages to the petitioner/wife. It shows that she has concealed her true income from the Court. The respondent/husband in his application u/s 127 of Cr.P.C has clearly stated that he has responsibility of his parents and younger brother also in addition to the payment of EMI to the house loan, which he has taken. No doubt, it is the responsibility of the respondent to provide the maintenance to his legally wedded wife but in the present case, it is clear that the petitioner/wife is working and earning and even if her income is taken as per minimum wages, still she cannot be earning less than Rs. 10,000/- per month. Keeping in view the monthly income of the respondent/husband and his responsibility and further status of both the parties, the application for grant of interim



maintenance filed by petitioner/wife is dismissed and the application U/s 127 of Cr.P.C filed by respondent/husband is disposed off in above said terms.”

Submissions of learned counsels

6. Learned counsel for the petitioner argued that the order of the learned Trial Court is liable to be set aside since there was no change of circumstances warranting modification or withdrawal of the order granting interim maintenance. It was further argued that there was nothing on record to substantiate the claim of the respondent before the learned Trial Court that the petitioner was working and was able to maintain herself.

7. Responding to the aforesaid submissions, learned counsel for the respondent argued that the petitioner has not come to the court with clean hands and there was sufficient material before the Trial court to conclude that the petitioner had played fraud on the court as she was working and had sufficient income and means to sustain herself. The learned counsel for the respondent repeatedly referred to the cross-examination of the petitioner to persuade this court that the petitioner was not entitled to maintenance, thus seeking dismissal of the present petition.

Maintenance under Section 125 Cr.P.C.

i) Ingredients and Objective

8. Before taking up the case in hand on its facts, it will be useful to discuss Section 125(1) Cr.P.C. The same reads as under:



“...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

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 as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct...”

9. A bare reading of the Section will reveal that to make out a case for grant of maintenance, it is to be proved, firstly, that the petitioner is legally wedded wife of the respondent, secondly, that the petitioner is unable to maintain herself, thirdly, that there has been willful neglect or refusal on the part of the respondent to maintain the petitioner, and fourthly, that the respondent has sufficient means to maintain the petitioner.

10. To understand the object that Section 125 Cr.P.C. aims to achieve, it will be useful to refer to the case of **Vimala (K) v. Veeraswamy (K)**, (1991) 2 SCC 375, wherein the Hon'ble Apex Court has opined that:

“3. Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent



vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife...”

11. The object and purpose behind Section 125 Cr.P.C. was further elaborated by the Hon’ble Supreme Court in the case of ***Kirtikant D. Vadodaria v. State of Gujarat & Anr. (1996) 4 SCC 479***, wherein the Court observed as under:

“15. ...While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation...”

12. A division bench of the Apex Court in the case of ***Chaturbhuj v. Sita Bai (2008)2 SCC 316*** further held that:

“6. The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase "unable to maintain herself" in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Captain



Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Ors. (1978) 4 SCC 70 falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India, 1950 (in short the 'Constitution'). It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in *Savitaben Somabhai Bhatiya v. State of Gujarat and Ors.* (2005) 3 SCC 636”

13. The Hon’ble Apex Court in ***Bhuwan Mohan Singh v. Meena & Ors.* (2015) 6 SCC 353**, while reiterating the aforesaid legal positions, observed as under:

“2. Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short “the Code”) was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the Court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is



compelled to resign to her fate and think of life “dust unto dust”. It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able bodied. There is no escape route unless there is an order from the Court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.”

14. A combined reading of the objective laid down in catena of judgments of the Hon'ble Supreme Court and Section 125 Cr.P.C. makes it clear that in case a husband neglects or refuses to maintain his wife, the wife who is struggling financially and is unable to maintain herself can take benefit of the provision of Section 125 Cr.P.C. which would serve as a quick remedy. The aim is to ensure that the wife does not undergo financial hardship and is rather able to enjoy the same status and comfort as enjoyed by her husband and lead a decent and respectful life.

ii) Interim Maintenance under Section 125 Cr.P.C.

15. Since prior to Amendment of 2001, there was no provision to grant interim maintenance, this issue was discussed in the case of ***Savitri v. Gobind Singh Rawat (1985) 4 SCC 337*** wherein the Court observed that though there was no express provision in the Code for grant of interim maintenance, considering the objective of the provision and social purpose behind the legislation, Section 125 Cr.P.C. should be interpreted as conferring power by necessary implication on the Magistrate to pass such an order.



16. Thereafter, the Parliament in its wisdom amended the provision, thereby expressly authorizing the Magistrate to grant interim maintenance. In the Statement of Objects and Reasons, it was stated as under:

"...It has been observed that an applicant, after filing application in a Court under Section 125 of the Code of Criminal Procedure, 1973, has to wait for several years for getting relief from the Court. It is, therefore, felt that express provisions should be made in the said Code for interim maintenance allowance to the aggrieved person under said Section 125 of the Code. Accordingly, it is proposed that during the pendency of the proceedings, the Magistrate may order payment of interim maintenance allowance and such expenses of the proceedings as the Magistrate considers reasonable, to the aggrieved person. It is also proposed that the order be made ordinarily within sixty days from the date of the service of the notice..."

17. Thus, the concept of interim maintenance was introduced by means of the Amendment Act of 2001 and the term 'allowance' was given a wider meaning so as to include interim maintenance within its ambit. Second proviso to Section 125(1), after the Amendment, provides as under:

"...Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct..."



18. The introduction of interim maintenance under section 125 Cr.P.C. was with a view that during the pendency of proceedings under section 125 Cr.P.C., the petitioner should be paid some amount in order to enable her to meet day-to-day expenses and other survival needs along with the expenses relating to litigation. Thus, the Courts have to be very cautious while rejecting a claim of interim maintenance at the threshold of filing of a case unless there are sufficient grounds to deny the same.

19. In the recent case of ***Rajnesh v. Neha and Ors. (2021) 2 SCC 324***, the Hon'ble Apex Court has extensively dealt with the factors to be considered while deciding the quantum of maintenance/ interim maintenance. The observations in the case read as under:

“77. The objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

78. The factors which would weigh with the court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife. [Refer to Jasbir Kaur Sehgal v. District Judge, Dehradun, (1997) 7



SCC 7; Refer to Vinny Parmvir Parmar v. Parmvir Parmar, (2011) 13 SCC 112 : (2012) 3 SCC (Civ) 290]

79. In Manish Jain v. Akanksha Jain [Manish Jain v. Akanksha Jain, (2017) 15 SCC 801 : (2018) 2 SCC (Civ) 712] this Court held that the financial position of the parents of the applicant wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the court should mould the claim for maintenance based on various factors brought before it.

80. On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able-bodied and has educational qualifications. [Reema Salkan v. Sumer Singh Salkan, (2019) 12 SCC 303: (2018) 5 SCC (Civ) 596: (2019) 4 SCC (Cri) 339]

81. A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. [Chaturbhuji v. Sita Bai, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 :



(2008) 1 SCC (Cri) 356] The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort...”

20. This court in the case of ***Bharat Hegde v. Saroj Hegde, 2007 SCC OnLine Del 622*** also laid down the relevant factors to be considered while deciding **interim maintenance**. The same reads as under:

“8. Unfortunately, in India, parties do not truthfully reveal their income. For self-employed persons or persons employed in the unorganized sector, truthful income never surfaces. Tax avoidance is the norm. Tax compliance is the exception in this country. Therefore, in determining interim maintenance, there cannot be mathematical exactitude. The court has to take a general view. From the various judicial precedents, the under noted 11 factors can be culled out, which are to be taken into consideration while deciding an application under Section 24 of the Hindu Marriage Act. The same are:

- 1. Status of the parties.*
- 2. Reasonable wants of the claimant.*
- 3. The independent income and property of the claimant.*
- 4. The number of persons, the non-applicant has to maintain.*
- 5. The amount should aid the applicant to live in a similar life style as he/she enjoyed in the matrimonial home.*
- 6. Non-applicant's liabilities, if any.*
- 7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.*
- 8. Payment capacity of the non-applicant.*



9. Some guess work is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.

10. The non-applicant to defray the cost of litigation.

11. The amount awarded Under Section 125 Cr.PC is adjustable against the amount awarded Under Section 24 of the Act...”

Observations and Findings

21. Coming to the facts in hand, the Respondent had moved an application under Section 127 Cr.P.C. seeking modification of order dated 09.08.2017. The relevant portion of the said application, relying upon which the learned Trial court has based its judgment, reads as under:

"That, in fact, the petitioner/ wife prior to the marriage was working as a Nurse in Labour Room of Jeewan Hospital & Nursing Home, Jeewan Nagar, Opposite Maharani Bagh, New Delhi-110014 and a certificate to this effect was issued by the hospital, copy of which is attached. It is pertinent, to mention here that the parents of the petitioner are running Canteen in Jeewan Nursing Home and they have having huge incomes from the said Canteen. Even the Aunties (Mausees) and other relatives of the petitioner have been working in Jeewan Hospital and they due to their contacts the petitioner got the services in Nursing homes. And after the marriage, she applied for service in Batra Nursing Home. New Delhi and there she furnished her resume. Copy of the resume furnished by her to Batra Nursing Home herewith and as per the knowledge of the respondent, she is getting the salary of about Rs.10,000/- per month"

22. It is pertinent to note that the parties in this case were married on 21.01.2014. The learned Trial Court, while rejecting the petitioner's claim for maintenance, observed that the petitioner had been working in



the year 2013, since a certificate dated 15.12.2013 proving the employment of the petitioner was available on record. The learned Trial Court also observed that the petitioner was employed even after her marriage, up to the year 2015. The learned Trial court then went on to hold, on the basis of her previous employments and on basis of a resume of the petitioner filed by the respondent, that the petitioner was employed at the time of filing of petition under Section 125 Cr.P.C. and passing of the impugned order as well. However, in the application filed under Section 127 Cr.P.C., the respondent had not filed any material, except a mere resume of the petitioner, to prove that the petitioner was working on the date when the petition was filed and when the impugned order was passed. The learned Trial Court further presumed that the petitioner must be earning at least minimum wages, without there being any iota of evidence of any income or employment of the petitioner.

23. The learned Trial Court failed to note that the wife was only to make out a case that she was legally wedded wife of the respondent, that she had been living separately due to reasonable cause, that she was unable to maintain herself and that the respondent despite having sufficient means had refused to maintain her at the stage of grant of interim maintenance.

24. In the case of *Manju Sharma v. Vipin*, 2019 SCC OnLine Del 8960, it has been clearly laid down by this Court that at the stage of interim maintenance, only *prima facie* view needs to be taken.



25. A *prima facie* view of the matter would have made it clear that the petitioner had been able to make out a case that she was not earning at the relevant time, i.e., when petition was filed under section 125 Cr.P.C. and when the impugned order was passed. The learned Trial Court, however, based its judgment on the premise that since the petitioner was working in the year 2013 and was also working for some time after her marriage and earning Rs. 6,000/- per month, she would thus, definitely be employed at present and earning at the time of passing of the impugned order. The learned Trial Court in holding so has relied heavily on a resume/bio-data which has been filed by the Respondent in the application filed under Section 127 Cr.P.C.

26. While presuming the petitioner to be employed at the time of passing of the impugned order, on the basis of her previous employments, the learned Judge also failed to take note of the fact that it is not the capacity or the capability of the wife to earn at relevant time which is to be considered for deciding amount of maintenance, but the actual earnings at a given time are to be taken into account.

27. It has been held in the case of ***Shailja & Anr. v. Khobbanna (2018) 12 SCC 199*** by the Hon'ble Supreme Court that capability of earning and actually earning have different connotations. The observations of the Hon'ble Supreme Court read as under:

"5. That apart, we find that the High Court has proceeded on the basis that the appellant was capable of earning and that is one of the reasons for reducing the maintenance granted to her. The Family Court whether the appellant No.1 is capable of earning or whether she is actually earning are two different requirements. Merely because the appellant No.1 is capable



of earning is not, in our opinion, sufficient reason to reduce the maintenance awarded by the Family Court..."

28. A similar view was followed by this Court in **Arun Vats v. Pallavi Sharma 2019 SCC Online Del 11817**, wherein it was observed that merely because the wife is capable of earning, should not be a determinative criterion to lower the maintenance amount. The observations of this Court read as follows:

"8. In Shalifa & Anr v. Khobbana reported as (2018) 12 SCC 199. it was held that 'capable of earning and actual earning' are two different requirements. Merely because wife is capable of earning was held not to be a sufficient reason to reduce the maintenance awarded by the Family Court"

29. Therefore, capacity to earn and actually having an income are two different things. Only a bald plea that the respondent was in possession of a resume of the petitioner and suspected that the petitioner was employed somewhere, in absence of any document to show the same, cannot form the basis of an order denying interim maintenance to the petitioner.

30. Even otherwise, the Hon'ble Supreme Court in the case of **Sunita Kachwaha v. Anil Kachwaha (2014) 16 SCC 715** has held that merely because wife is earning something, would not make a ground to reject her claim for maintenance more particularly when her earnings are not placed on record. The observations of the Apex Court read as under:

"8. The learned counsel for the respondent submitted that the appellant-wife is well qualified, having post graduate degree in Geography and working as a teacher in Jabalpur and also working in Health Department. Therefore, she has



income of her own and needs no financial support from respondent. In our considered view, merely because the appellant-wife is a qualified post graduate, it would not be sufficient to hold that she is in a position to maintain herself. Insofar as her employment as a teacher in Jabalpur, nothing was placed on record before the Family Court or in the High Court to prove her employment and her earnings. In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance."

31. The learned Trial Court while dismissing the application under section 125 Cr.P.C. and allowing the application under section 127 Cr.P.C held that the Court has to consider the fact that the respondent was paying Rs. 23,000/- per month towards EMI of a housing loan and also maintaining his parents and 26-year-old brother. In the opinion of this court, the learned Judge committed an error while holding so, since by paying EMI, the respondent was creating an asset for himself, which further points out that he has enough means and strong financial capacity. It is settled position of law that compulsory deductions are permissible to be deducted to calculate income of husband.

32. It has been held categorically in the case of **Nitin Sharma v. Sunita Sharma & Others 2021 SCC OnLine Del 694**, that only statutory mandatory deductions from the income of the husband are permissible to be deducted for the purpose of computation of his income for the purpose of grant of maintenance. The observations of the Court read as follows:

"...24. In the opinion of this Court, while calculating the quantum of maintenance, the income has to be ascertained keeping in mind that the deductions only towards income tax and compulsory contributions like GPF, EPF etc. are



permitted and no deductions towards house rent, electric charges, repayment of loan, LIC payments etc. are permitted..."

The court further reiterated what was held by the Hon'ble Punjab & Haryana High Court in the case of **Seema v. Gourav Juneja 2018 SCC OnLine P&H 3045** which is stated as under:

"13. In a nutshell, a husband cannot be allowed to shirk his responsibility of paying maintenance to his wife, minor child, and parents by availing loans and paying EMIs thereon, which would lead to a reduction of his carry home salary..."

33. Similarly in **Dr. Kulbhushan Kunwar v. Raj Kumari (1970) 3 SCC 129**, the Hon'ble Supreme Court while deciding the fixation of rate of maintenance, had made the following observations:

"...19. It was further argued before us that the High Court went wrong in allowing maintenance at 25% of the income of the appellant as found by the Income Tax Department in assessment proceedings under the Income Tax Act. It was contended that not only should a deduction be made of income-tax but also of house rent, electricity charges, the expenses for maintaining a car and the contribution out of salary to the provident fund of the appellant. In our view some of these deductions are not allowed for the purpose of assessment of "free income" as envisaged by the Judicial Committee. Income Tax would certainly be deductible and so would contributions to the provident fund which have to be made compulsorily. No deduction is permissible for payment of house rent or electricity charges. The expenses for maintaining the car for the purpose of appellant's practice as a physician would be deductible only so far as allowed by the income-tax authorities i.e. in case the authorities found that it was necessary for the appellant to maintain a car..."



34. In the present case, on one hand, the husband was being allowed to create an asset i.e., a house and on the other, the wife was being denied maintenance without there being any material to *prima facie* substantiate that she was employed and having an income to sustain herself. The learned Trial Court also failed to take note of the fact that law mandates that the wife is entitled to the same status of living and amenities as enjoyed by her husband, as also observed by this Court in ***Sarita Bakshi v. State and Anr. 2022 SCC OnLine Del 1707.***

35. During the course of arguments, the learned counsel for the respondent repeatedly referred to the cross-examination of the petitioner to persuade this Court that Petitioner was not entitled to maintenance. However, this Court cannot look into the material which was not before the learned Trial Court when the impugned order was passed. The cross-examination of the petitioner was conducted only after the impugned order was passed.

36. Further, needless to say, in case any party has played fraud upon the Court or has concealed any fact from the Court, the courts are not powerless that they will not be able to ensure that consequences of such fraud or concealment follow at the end of the trial.

Conclusion

37. At the cost of repetition, it is again reiterated that while passing orders under Section 125 Cr.P.C., the courts have to decide the cases on the strength of the facts and circumstances of each case. The application under Section 125 Cr.P.C. for grant of interim maintenance



has to be decided as per judgment of *Rajnesh v. Neha and Ors. (2021) 2 SCC 324*.

38. Admittedly, the income of the respondent/husband in the present case was Rs. 39,994/-. Further, there was no material on record to show that the petitioner/wife was having any income at the time of passing of impugned order. The burden of proving, as to whether on the relevant date the petitioner was earning and that she had misled the court, was on the person who was alleging so in the application under Section 127 Cr.P.C., and not vice-a-versa. The respondent did not produce on record even a single piece of paper which could have persuaded the learned Trial Court to conclude that the wife was earning and that she had misled the court. The Trial Court, only on the premise that the petitioner was working before her marriage, and was also employed after marriage, which she had denied in her affidavit but admitted in her petition, proceeded to hold that she must have been working at the time of passing of impugned order as well.

39. The qualification of the wife is only 10th standard and at present, she is aged about 35 years. The Court while making opinion about the circumstances and facts of a case must not turn a blind eye towards the societal circumstances and the opportunities which may be available to a person who is aged about 35 years with the qualification of having studied up to only 10th standard. The Courts dealing with cases of maintenance ought to balance the circumstances and facts of a case and pass orders as per law to ensure that the object behind Section 125 Cr.P.C. is not defeated.



40. Therefore, in view of the foregoing discussion, this Court holds that the learned Trial Court committed error in declining application for grant of interim maintenance and allowing application under Section 127 Cr.P.C. and therefore, the impugned order is liable to be set aside. The learned Trial Court is directed to decide the application for grant of interim maintenance afresh in light of the observations made hereinabove. The parties will file their affidavit of income, assets and expenditure as per mandate of law within three weeks of receipt of this order before learned Trial Court. The application will be decided preferably within two months of receipt of this order.

41. In view of the above, the petition stands disposed of.

42. Copy of this order be sent to the learned Trial Court forthwith.

SWARANA KANTA SHARMA, J

SEPTEMBER 20, 2022/zp

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