

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
245 **CRM-M-26185-2018 (O&M)**
Date of decision: 31.08.2023

Smt. Rajesh

...Petitioner(s)

Vs.

Pratham Singh

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Rajeev Mundal, Advocate
for the petitioner.

Mr. Vaibhav Jain, Advocate
for the respondent.

NIDHI GUPTA, J.

Challenge in the present petition filed under Section 482

Cr.P.C. is to the order dated 14.07.2017 (Annexure P3) passed by learned District Judge, Family Court-III, Faridabad vide which application filed by the petitioner for rectification in judgment dated 20.08.2014 passed by learned District Judge, Family Court, Faridabad, to the effect that amount of maintenance was to be paid from the date of application, has been dismissed.

2. Learned counsel for the petitioner submits that the application filed by the petitioner under Section 125 Cr.P.C. was allowed by the learned Judicial Magistrate, First Class, Faridabad vide order dated 03.05.2008, as per which the petitioner was granted final maintenance of Rs.3,000/- per month. However, as the said amount was very meagre, the petitioner moved an application for enhancement under Section 127 Cr.P.C.

This application was allowed by the learned District Judge, Family Court,

Faridabad vide judgment dated 20.08.2014 (Annexure P1) whereby maintenance awarded to the petitioner was enhanced to Rs.10,000/- per month. However, the order dated 20.8.2014, did not specify as to from which date would the enhanced maintenance be payable. Accordingly, the petitioner moved an application (Annexure P2) for rectification of the said judgment dated 20.08.2014 (Annexure P1). It is submitted that vide the impugned order dated 14.07.2017 (Annexure P3), said application for rectification has been dismissed.

3. Learned counsel submits that it is a well settled principle of law that the amount of maintenance is to be paid from the date of filing of the petition for maintenance rather than from the date of order or judgment. It is submitted that however, the learned Court below has failed to consider this aspect of the matter, and therefore, the impugned order is legally unsustainable.

4. I have heard learned counsel for the petitioner.

5. Perusal of record of the case reveals that the petitioner was married to the respondent on 08.07.1992. Admittedly, the parties have been living separately since 14.10.2000. On 21.5.2002 the petitioner had filed a petition under Section 125 Cr.P.C. seeking grant of maintenance. This petition was allowed by the learned Judicial Magistrate, 1st Class, Faridabad vide order dated 03.05.2008, whereby final maintenance of Rs.3,000/-was granted to the petitioner.

6. Thereafter, after about three years of passing of above said order dated 03.05.2008, the petitioner filed an application dated

25.03.2011 under Section 127 Cr.P.C. seeking enhancement of above said maintenance of Rs. 3000/-. Vide order dated 20.08.2014 (Annexure P1) the learned District Judge, Family Court, Faridabad allowed this application and maintenance of Rs.3,000/- per month granted to the petitioner was enhanced to Rs.10,000/- per month, by directing that *"...Hence, the maintenance is enhanced to Rs.10,000/- per month. The petition is accordingly allowed."* It has been stated that as the learned District Judge had failed to specify the date from which the said enhanced maintenance would be payable, the petitioner filed the present application dated 10.01.2017 (Annexure P2) for rectification of the said order dated 20.08.2014, which has been dismissed vide impugned order dated 14.07.2017.

7. From the above facts it is clear that the petitioner had filed the application for enhancement in 2011 i.e. after 3 years of passing of the order dated 03.05.2008; and even the application for rectification of order dated 20.08.2014, has been filed three years thereafter only on 10.01.2017 It is my considered view, that in such a situation where the delay has been caused on part of the petitioner herself, she cannot seek payment of enhanced maintenance from date of filing of application. No doubt there is no limitation prescribed, however, even so, in the present case the delayed application for rectification on part of the petitioner implies additional enhanced financial burden on the respondent for no fault on his part. Moreover, there is no reason given by the petitioner as to why the application for rectification was filed at such a belated stage.

8. Furthermore, it has come on record that the respondent is 40% disabled by one hand. This Court is bound to be sensitive to the problems and additional financial burdens that the said disablement would inevitably entail. Admittedly, due to his handicap, the respondent has to employ one house servant for doing his kitchen work, etc. to whom he is paying a salary of Rs.2,000/- per month. Though the respondent is employed as an SS Teacher at Government High School, Deeghaut, Hodal, he is residing in rented premises at Palwal where he is paying rent of almost Rs.2,000/- per month. The respondent is also spending an amount of Rs.2,500/- per month on transportation/commuting from his residence to the Government High School, at Deeghaut, Hodal. Admittedly too, the respondent has to fulfil his social obligations towards his three married sisters, and also has the responsibility of looking after his old-aged parents. On the other hand, the petitioner is residing at her parental house, and unlike the respondent, it is not her pleaded case that she has any other responsibilities save herself.

9. Even otherwise, a harmonious reading of Section 125(2) and Section 127 Cr.P.C. would show that any maintenance granted by the Court shall be payable from the date of order, *or if so ordered*, from the date of application for maintenance etc. Thus, unless so specified, maintenance shall be payable from the date of order. Accordingly, had the learned District Judge intended to exercise his discretionary power under the above said provisions to grant maintenance from the date of application, he would have specified to this effect. This has not been done.

Non-exercise of discretionary power by the learned District Judge does not cause any infirmity in the impugned order.

10. Further it has been correctly noticed in the impugned order that as per Section 362 Cr.P.C., there is an absolute bar in altering or reviewing a final judgment on merits except for correction of clerical or arithmetical error. In the present case, clearly there is no clerical or arithmetical error. Hence, in any case, no ground is made out for rectification/review of judgment dated 20.08.2014.

11. Accordingly, keeping in view the totality of the facts and circumstances of the case as also the legal position as noticed above, I find no ground is made out to interfere in the impugned order.

12. **Dismissed.**

13. Pending application(s) if any also stand(s) disposed of.

31.08.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No