

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

203

CRR(F)-505-2018

Date of Decision : 19.04.2023

Dinesh Kumar Dagar

..... Petitioner

Versus

Smita Dagar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Hitesh Pandit, Advocate
for the petitioner.

Mr. Gagandeep Singh, Legal Aid Counsel
for the respondents.

JAGMOHAN BANSAL, J. (Oral)

The petitioner through instant petition is seeking setting aside of order dated 23.08.2018 whereby Additional Principal Judge, Family Court, Faridabad, in terms of Section 125 of Cr.P.C. has granted interim maintenance of Rs.47,000/- per month to the respondents i.e. Rs. 35,000/- to respondent No. 1-wife and Rs. 6,000/-each to respondents No. 2 and 3.

Learned counsel for the petitioner *inter alia* contends that the petitioner has been directed to pay a sum of Rs.20,000/- per month under the Protection of Women from Domestic Violence Act, 2005 (for short, 'DV Act') and the Family Court ignoring the regular payment of maintenance of Rs.20,000/- under DV Act and has further granted maintenance of Rs.47,000/- per month to the respondents under Section 125 Cr.P.C. As per judgment of Hon'ble Supreme Court in **Rajneesh Vs. Neha and another,**

(2021)2 SCC 324, the maintenance cannot be awarded under two different enactments.

Learned counsel for the respondents submits that as per judgment of Hon'ble Supreme Court in Rajneesh's case (supra), the maintenance can be awarded under HM Act, DV Act and Section 125 Cr.P.C., however, Courts are supposed to adjust/consider the amount awarded under one enactment while passing order under another enactment. He further submits that he has no objection if amount of maintenance awarded under DV Act is adjusted against maintenance awarded under Section 125 Cr.P.C., however, amount of maintenance awarded under 125 Cr.P.C. may not be reduced especially when gross salary of the petitioner is more than Rs.2 lakhs per month.

I have heard the arguments of learned counsel for the parties and perused the record.

The income of the petitioner as assessed by Family Court is Rs.1.8 lakhs per month and as per latest salary certificate issued by HPCL, the monthly gross salary of the petitioner is Rs.2.89 lakhs. As per judgment of Hon'ble Supreme Court in Rajneesh's case (supra), the maintenance can be awarded under different enactments, however, amount of maintenance awarded under one Act needs to be considered while passing order under another enactment.

Admittedly, the gross salary of the petitioner at the time of passing of impugned order was Rs.1.8 lakh and at present, it is Rs.2.89 lakhs. There seems no reason to reduce the amount of maintenance awarded under Section 125 Cr.P.C., accordingly, prayer qua reduction of amount of

maintenance is turned down. However, in view of statements of parties, it is made clear that amount of maintenance awarded under Section 12 read with Section 23 of DV Act shall be adjusted against maintenance awarded under Section 125 Cr.P.C.

Disposed of in the above terms.

(JAGMOHAN BANSAL)
JUDGE

19.04.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>