

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-33090-2023 IN/AND
CRR (F)-1153-2023 (O&M)
Date of Decision: 15.11.2023

YUNUS

.....PETITIONER

Vs.

SALMA

.....RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Anas Ahmed, Advocate, for the applicant-petitioner.

HARPREET KAUR JEEWAN J. (ORAL)

CRM-33090-2023

By this application, the applicant-petitioner seeks condonation of delay of 32 days in filing the present criminal revision petition.

In view of the averments made in the application, which is duly supported by an affidavit of the applicant-petitioner, the application is allowed and the delay of 32 days in filing the present petition is hereby condoned.

CRR (F)-1153-2023 (O&M)

[1] The present Criminal Revision Petition has been filed by the petitioner-husband for quashing of the order dated 05.04.2023, passed by the learned Principal Judge, Family Court, Nuh, Camp Court Ferozepur, whereby during the pendency of an application under Section 125 Cr.P.C., respondent No. 1-wife and respondent No. 2-minor child have been awarded interim maintenance of ₹4,500/- and ₹2,500/- per month respectively.

[2] Learned counsel for the petitioner submits that the respondent herself left the matrimonial home at her own will without any reason, whereas the petitioner is ready and willing to keep the respondent with him and therefore, the respondent is not entitled for any maintenance under Section 125 Cr.P.C.

[3] He further submits that the learned Principal Judge, Family Court, Nuh, Camp Court, has erred in granting the maintenance of Rs. 7,000/- per month, w.e.f. the date of filing the petition, without giving any reasons and without taking into consideration the fact that there is no material evidence on record to prove the income of the petitioner. The respondent has made false averments by filing the aforesaid petition and also suppressed the material facts and stated in the aforesaid petition that that the petitioner is the owner of 4 acres of land, tractor and other rental income. The said contentions are not supported by any document, as such, the impugned order is liable to be set aside.

[4] I have heard learned counsel for the petitioner and have gone through the paper-book carefully.

[5] The observations recorded by the learned Family Court while allowing the petition under Section 125 Cr.P.C. are as following:-

*6. "Heard. Factum of marriage is not denied. For the purpose of deciding this application, it is sufficient to observe³ that at present, petitioner No. 1 is the legally wedded wife of the respondent. In **Rajesh Burmann vs. Mitul Chatterjee (Barman): AIR 2009 SC 651**, Hon'ble Supreme Court of India approved the legal authority of **Atul Sashikant Mude vs. Niranjana Atul Mude: AIR***

1998 Bombay 234, wherein it was held that a Court is empowered to pass interim and ad-interim orders of maintenance and that the inclusive definition of the 'maintenance under the Act would include food, clothing residence, education, medical attendance and treatment.' In *Shail Kumari Devi vs. Krishan Bhagwan Pathak @ Kishun B Pathak: (2008) 9 SCC 632*, it was held that:

“21. So far as interim maintenance is concerned, it is true that Section 125 of the Code it originally enacted did not expressly empower the Magistrate to make such order and direct payment of interim. But the Code equally did not prohibit the Magistrate from making such order. Now, having regard to the nature of proceedings, the primary object to secure relief to deserted and destitute wives, discarded and neglected children and disabled and helpless parents and to ensure that no wife, child or parent is left beggared and destitute on the scrap-heap of society so as to be tempted to commit crime or to tempt others to commit crime in regard to them, it was held that the Magistrate had implied power to make such order.”

7. “Respondent is an able bodied, health person. Very recently, in *Anuj Garg vs. Deepak Kumar Garg: Criminal Appeal No. 1693 of 2022 {Arising out of SLP (Crl.) No. 10353 of 2018} date of decision: 28.09.2022 (SC)*, Hon'ble Supreme Court of India has held that:

“The husband is required to earn money even by physical labour, if he is able-bodied, and could not avoid his obligation, except on the legally permission grounds mentioned in the statute.”

Considering that respondent is under a legal duty to maintain his wife and minor child, I allow

the application for interim maintenance allowance and the respondent is hereby directed to pay a sum of Rs. 4,500/- per month to the petitioner No. 1 and Rs. 2,500/- to petitioner No. 2 (totally monthly maintainable amount of Rs. 7,000/-) from the date of filing the petition. Respondent is also directed to pay a sum of Rs. 2,000/- as litigation expenses. In case, the petitioners are getting maintenance in any other case, the higher amount would be granted in one of the case.”

[6] The relationship between the parties is admitted. Respondent No. 1 is the wife and respondent No.2 is the minor child of the petitioner. The interim maintenance has been granted during the pendency of the petition under Section 125 Cr.P.C. and the allegations and counter-allegations of the parties are yet to be proved on merits. It was argued before the Family Court that the petitioner-husband is a daily wager. No affidavit disclosing the income, assets and liabilities was filed before the Family Court. No such affidavit has been filed even before this Court despite a specific order dated 22.09.2023 was passed by the co-ordinate Bench in the present petition.

[7] Keeping in view these circumstances, even if the petitioner is stated as a daily wager employee, he presumed to be earning around ₹16,000/- per month and awarding of a sum of ₹7,000/- both to the wife and to the minor child are merely to save them from destitution and vegerancy which is in resonance with the spirit of Section 125 Cr.P.C.

[8] No illegality or irregularity is found in the impugned order, as such, the present petition is dismissed in *limine* being without merits.

[9] Pending miscellaneous application (s), if any, shall also stand disposed of.

November 15, 2023

(HARPREET KAUR JEEWAN)
JUDGE

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Whether Speaking	Yes
Whether reportable	No