

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRR(F)-1118-2019

Date of Decision: *September 02, 2023*

Durga Dass

... *Petitioner*

Versus

Santosh Kumari

... *Respondent*

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Ms. Deepika Chauhan, Advocate,
for Mr. R.S. Chauhan, Advocate,
for the petitioner.

Mr. Vishal Sharma, Advocate,
for the respondent.

Vivek Puri, J.

1. The petitioner has assailed the order dated 20.09.2019 passed by the learned Family Court, Hoshiarpur, camp at Garshankar, vide which the maintenance awarded to the respondent has been enhanced to Rs.2500/- per month, on the application under Section 127 of the Code of Criminal Procedure (for short 'Code').

2. The respondent being legally wedded wife of the petitioner had instituted a petition under Section 125 of the Code and in terms of the order dated 27.10.2010, maintenance @ Rs.1000/- per month was awarded. It was alleged that the petitioner is doing the work for farming and property dealer and earning Rs. 50,000/- per month. On account of change of circumstances, the application under

Section 127 of the Code has been moved for enhancement of maintenance amount.

3. The notice of the petition under Section 127 of the Code was issued to the petitioner, who was proceeded against *ex parte*.

4. In terms of the impugned order, the maintenance was enhanced to Rs.2500/- per month. Aggrieved by the aforesaid order, present petition has been instituted.

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

6. Learned counsel for the petitioner contends that the petitioner is aged about 55 years and he has already paid a sum of Rs.47,000/- on account of arrears of maintenance. The application under Section 127 of the Code has been instituted to harass and humiliate the petitioner and grab money from him.

7. On the contrary, learned counsel for the respondent has contended that the petitioner was *ex parte* in the Court below. The respondent has herself stepped into the witness box and also examined Sham Lal as PW2 to substantiate the contentions put forth by her. The respondent is an able-bodied person and the amount of maintenance as enhanced vide impugned order cannot be termed to be on higher side.

8. During the course of hearing, it has not been disputed that the marriage of the petitioner was solemnized in the year 1991 and no child has been born from the wedlock. Admittedly, in the proceedings under Section 125 of the Code, the maintenance was awarded @ Rs.1000/-per month in favour of the respondent in terms of the order dated 27.10.2010. Vide the impugned order, the same has been enhanced to Rs.2500/- per month.

9. Section 127 of the Code empowers the Court to enhance the maintenance granted under Section 125 of the Code on the proof of change of circumstances.

10. It is significant to note that the maintenance @ Rs.1000/- per month was awarded as back as on 27.10.2010. In the year 2017, the respondent has instituted the application under Section 127 of the Code for enhancement of the maintenance. Although, there was no sufficient and reliable material to indicate that the petitioner was working as an agriculturist or engaged in the business of property dealing, but it was concluded by the learned Family Court that the petitioner is an able-bodied person. Even on the assumption that the petitioner is working as a casual labourer and keeping in view the contingency of employment, his monthly income can be taken as Rs.8000/- per month in the year 2017.

11. With the passage of time, there is escalation of the prices and the cost of living has increased. The wages of the petitioner must have also increased during the course of time. There is nothing to indicate that with the passage of time, the earnings or the earning capacity of the petitioner, has been reduced. There is nothing to indicate that the petitioner has any other liability. It has not been disputed that no child has been born from the wedlock. The respondent has been proceeded against exparte in the proceedings under Section 127 of the Code in the learned Family Court and has failed to controvert the allegations as put forth by the respondent. Even otherwise, the amount of maintenance as enhanced to Rs. 2500/- per month in terms of the impugned order cannot be termed to be excessive or not commensurate with the income and status of the petitioner or the same has been awarded on higher side without any change of circumstances.

12. For the aforesaid reasons, finding no merit in the petition, the same is dismissed.

September 02, 2023

vkdl

(Vivek Puri)
Judge

Whether reportable : Yes
Whether speaking/reasoned : Yes