

CRR(F)-8-2021 (O&M) and one more case 1

211 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 11.09.2024

1. CRR(F)-8-2021 (O&M)
MONI JAIN AND ANOTHER
V/S
...PETITIONERS

RAJA RAM
...RESPONDENT

2. CRR(F)-101-2021
RAJA RAM
V/S
...PETITIONER

MONI JAIN AND ANOTHER
...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Sharmila Sharma, Advocate
for the petitioners in CRR(F)-8-2021
and for the respondents in CRR(F)-101-2021.

Mr. Jainainder Saini, Advocate
for the petitioner in CRR(F)-101-2021
and for the respondent in CRR(F)-8-2021.

HARPREET SINGH BRAR J. (ORAL)

1. The present revision petitions have been preferred against the impugned order dated 18.01.2020 passed by the learned Additional Principal Judge, Family Court, Sonipat under Section 125 of the Cr.P.C. vide which claim of petitioner No. 1-wife for seeking maintenance has been declined, whereas petitioner No. 2-Baby Avni (minor daughter) has been awarded maintenance @ Rs. 4,000/- per month from the date of filing of petition till 18.01.2020 and for future i.e. from 18.01.2020, she has been awarded maintenance @ Rs. 6,000/- per month till she attains majority.

2. For the sake of brevity, the facts are taken from CRR(F)-8-2021.

**CRR(F)-8-2021 (O&M) and one more case****2**

3. The marriage between petitioner No. 1-wife and respondent-husband was solemnized on 08.09.1997 according to Hindu Rites and Ceremonies. Two children Aryan and petitioner No. 2-Baby Avni (minor daughter) were born from the wedlock. However, matrimonial dispute ensued between the couple and the petitioners-wife and minor daughter filed a petition under Section 125 Cr.P.C. seeking maintenance to the tune of Rs. 30,000/- per month. The respondent-husband filed a reply and contested the claim made by the petitioners. The learned Family Court vide impugned order dated 18.01.2020 declined the claim of the petitioner No. 1-wife seeking maintenance, whereas petitioner No. 2-Baby Avni (minor daughter) has been awarded maintenance @ Rs. 4,000/- per month from the date of filing of petition till 18.01.2020 and for future i.e. from 18.01.2020, she has been awarded maintenance @ Rs. 6,000/- per month till she attains majority. Aggrieved by the same, both the parties have preferred these revision petitions.

4. Learned counsel for the petitioners in CRR(F)-8-2021 *inter alia* contends that learned Family Court, Sonipat has fallen into grave error by awarding a meager amount of Rs. 4,000/- per month in favour of petitioner No. 2-minor daughter and by declining the prayer for maintenance made on behalf of petitioner No. 1-wife as learned Court below did not take into consideration that respondent-husband is working as Upper Division Clerk (UDC) at Panipat Division and drawing a handsome salary of Rs. 40,000/- per month and apart from his salary he is also having rental income from his own house i.e. Rs. 12,000/- per month. Therefore, maintenance awarded to petitioner No. 2 is on the lower side and same deserves enhancement. Moreover, prayer of

**CRR(F)-8-2021 (O&M) and one more case****3**

maintenance on behalf of petitioner No. 1-wife has also been wrongly dismissed.

5. Per contra, learned counsel for the respondent-husband in CRR(F)-8-2021 contends that learned Family Court below has failed to appreciate the evidence produced by the respondent-husband on record to show that he is maintaining his son, who is residing with him and pursuing LL.B. (5 years) and his old mother. Learned Court below has discussed these facts in the judgment that respondent has to maintain his mother and his son but failed to give relief to the petitioner accordingly. Moreover, learned Court below has ignored the fact that petitioner No. 1-wife is receiving government aids from the Government of Delhi for education and other necessity of petitioner No. 2 being a girl child as such the burden of upbringing petitioner No. 2-minor daughter cannot be exclusively fastened upon the respondent-husband as petitioner No. 1-wife has no other liability except to maintain petitioner No. 2-minor daughter.

6. I have heard the learned counsel for the parties and gone through the case file with their able assistance.

7. The object and purpose behind granting maintenance is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of failure of marriage. At the same time, a just and careful balance must be struck to ensure that this provision does not degenerate into a weapon to punish the other spouse. The Courts are required to conduct the maintenance proceedings while being alive to the legislative intent behind the provision under Section 125 Cr.P.C in its true spirit, which is to provide speedy assistance and social justice to women, children and infirm parents. The

**CRR(F)-8-2021 (O&M) and one more case****4**

provisions of Section 125 Cr.P.C. were enacted as a measure to further social justice and protect dependent women, children and parents, which also fall within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India.

8. A three-Judge Bench of the Hon'ble Supreme Court in ***Vimala (K.) v. Veeraswamy (K.) (1991) 2 SCC 375***, speaking through Justice Fatima Beevi, opined that as follows:

“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.”

A two-Judge Bench of the Hon'ble Supreme Court in ***Kirtikant D. Vadodaria v. State of Gujarat (1996) 4 SCC 479***, speaking through Justice Faizan Uddin, opined as follows:

“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.”

9. Another objective the legislature has sought to achieve by this provision is to provide maintenance *pendente lite* to the applicant spouse during proceedings emerging out of matrimonial disputes so that the she/he can maintain herself/himself, have sufficient funds to pursue the litigation, and not suffer at the instance of the affluent spouse.



10. There is a general tendency on the part of the wife to amplify her needs and the husband to conceal his actual income, making it difficult to determine the earning capacity of the rival claimants with exactitude. The rival claimants must scrupulously bring on record their actual respective earning capacities in order for the Court to arrive at quantum of maintenance which is just and fair in terms of principle of equistatus. The quantum of maintenance must be justifiable and realistic to provide succour to the dependent spouse and also to avoid occurrence of the two extremes of the maintenance being either paltry or extravagant, ensuring that neither of the two is reduced to a life of penury. The adequacy of the maintenance allowance has to be determined by the yardstick of the dependent spouse being able to lead a life of reasonable comfort.

11. While dealing with the issue of maintenance *in extenso*, a two Judge bench of the Hon'ble Supreme Court in **Rajnesh v. Neha and another (2021) 2 SCC 324**, laid down the criteria for determining quantum of maintenance and issued the following directions:

"VI Final Directions

130. In view of the foregoing discussion as contained in Part B -I to V of this judgment, we deem it appropriate to pass the following directions in exercise of our powers under Article 142 of the Constitution of India:

(a) Issue of overlapping jurisdiction

131. To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that:

(i) where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or setoff, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding:



(ii) it is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding;

(iii) if the order passed in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding

(b) Payment of Interim Maintenance

132. The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the concerned Family Court / District Court / Magistrates Court, as the case may be, throughout the country.

(c) Criteria for determining the quantum of maintenance

133. For determining the quantum of maintenance payable to an applicant, the Court shall take into account the criteria enumerated in Part B III of the judgment.

134. The aforesaid factors are however not exhaustive, and the concerned Court may exercise its discretion to consider any other factor/s which may be necessary or of relevance in the facts and circumstances of a case.

(d) Date from which maintenance is to be awarded

135. We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B-IV above.

(e) Enforcement/Execution of orders of maintenance

136. For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1956; Section 20(6) of the D.V. Act; and Section 128 of Cr.P.C may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC more particularly Sections 51, 55, 58, 60 r.w. Order XXI."

12. Having heard learned counsel for the parties and perusing the record, this Court does not find force in the arguments advanced by learned counsel for the petitioner(s). Learned Court below has rightly come to the conclusion that merely because Baby Avni-petitioner No. 2 is staying under the shadow of her mother, who is an earning lady, it does not disentitle her from claiming maintenance from her father and admittedly, Raja Ram-respondent (father of petitioner No. 2) is working as UDC at Panipat Division and he is drawing a salary of Rs. 31,049/- per month, which must have increased with

the passage of time. Learned counsel for the petitioner(s) (in both the cases) have not been able to indicate any perversity in the impugned order which warrants interference by this Court. Accordingly, the both the revision petitions are hereby dismissed being bereft of any merit.

13. Pending CRM(s), if any, are also disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

11.09.2024
Ajay Goswami

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No