



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-71-2024 (O&M)

Date of decision: 27.09.2024

Mohinder Singh

....Petitioner

V/s

Baljinder Kaur

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Pardhuman Garg, Advocate for the petitioner.
Mr. Simranjeet S. Sarwara, Advocate and
Ms. Khushika Setia, Advocate for the respondent.

SUMEET GOEL, J.

1. The instant revision petition has been preferred against the order dated 07.08.2023 passed by the Principle Judge, Family Court, (Camp Court), Rajpura (hereinafter to be referred as the '*impugned order*') wherein, while deciding an application for interim maintenance, the Family Court has directed the petitioner (herein)-husband to pay interim maintenance to the respondent (herein)-wife to the tune of Rs.3,000/- per month from the date of the filing of the application before the said Court & one time litigation expenses to the tune of Rs.10,000/-.

2. Learned counsel for the petitioner-husband, while assailing the impugned order, has iterated that the case of the petitioner squarely falls within the ambit of Section 125(4) of Cr.P.C., 1973, as it is clear from the factual matrix of the matter that the wife was living in adultery & hence she was not entitled to any interim maintenance. To buttress his argument, learned counsel has relied upon the photographs (copies whereof have been

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appended as Annexure P-1 with the petition) which, as per the learned counsel, clearly show that the respondent (herein) is either married or living in some kind of connubial relationship with one Karampal Singh s/o Harmel Singh. To solidify this argument, the learned counsel has further referred to a copy of the memo of parties of a complaint case filed by the respondent (herein) - wife wherein she herself has stated that she is living with the said Karampal Singh. It has been further submitted that, assuming *arguendo*, the husband is liable to pay interim maintenance to wife then the quantum of interim maintenance assessed is on the higher side keeping in view the fact that the petitioner (herein) is earning only Rs.35-40,000/- per month. Thus, setting-aside of the impugned order has been sought for.

3. Learned counsel appearing for the respondent has submitted that the plea of adultery raised on behalf of the petitioner (herein) cannot be looked into at the stage of adjudication of the interim maintenance which is akin to a protem arrangement. It has been further submitted that, even if such a plea is raisable at this stage, at the instance of the husband, there is no cogent material available on record to substantiate the case of the husband that the wife is living in adultery. Learned counsel has further argued that, keeping in view the admitted stand of the petitioner (herein)-husband in his affidavit furnished before the Family Court stating that his monthly income is Rs.35-40,000/- per month, the interim maintenance awarded at the rate of Rs.3,000/- per month from the date of application cannot be said to be on the higher side. Thus, dismissal of the instant petition has been sought for.

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



Prime Issue

5. The prime issue that arises for consideration in the instant revision petition is as to whether the impugned order dated 07.08.2023 passed by the Principal Judge, Family Court, Rajpura deserves to be set-aside.

The pivotal legal issue that arises for consideration is as to whether the husband (non-applicant before the Family Court) is permitted to raise the plea that the wife is not entitled to interim maintenance and expense of proceedings (commonly referred to as ‘litigation expenses’), on the ground that she is living in adultery, in terms of the statutory provision contained in Section 125(4) of the Cr.P.C., 1973/Section 144(4) of BNSS, 2023. Further seminal issue is that if such a plea is permitted to be raised, then what is the degree/nature of proof required thereon.

6. **Relevant Statutory provisions**

The Code of Criminal Procedure, 1898 (hereinafter referred to as ‘Cr.P.C., 1898’)

Section 488 of Cr.P.C. 1898 reads as under:-

“488. (1)	xxx	xxx	xxx
(2)	xxx	xxx	xxx
(3)	xxx	xxx	xxx
(4)	<i>No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason she refuses to live with her husband, or if they are living separately by mutual consent;</i>		
(5)	<i>On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent the Magistrate shall cancel the order.</i>		



(6) xxx xxx xxx xxx
(7) xxx xxx xxx xxx”

The Code of Criminal Procedure, 1973 (hereinafter referred to as ‘Cr.PC., 1973’)

Section 125 of Cr.P.C. (as it stood before 24.09.2001) reads as under:-

“125. Order for maintenance of wives, children and parents.-

(1) xxx xxx xxx xxx
(2) xxx xxx xxx xxx
(3) xxx xxx xxx xxx

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.
(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to life with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order. ”

Section 125 of Cr.P.C. (as it stood after 24.09.2001)

125. Order for maintenance of wives, children and parents-

(1) xxx xxx xxx xxx
(2) xxx xxx xxx xxx
(3) xxx xxx xxx xxx

(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.
(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order. ”



The Bharatiya Nagarik Suraksha Sanhita, 2023(hereinafter referred to as ‘BNSS, 2023’)

“144. Order for maintenance of wives, children and parents: —

- (1) xxx xxx xxx xxx
- (2) xxx xxx xxx xxx
- (3) xxx xxx xxx xxx

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order. ”

Relevant Case Law

7. The precedents germane to the issue(s) in question are as follows:

(I) **Re: Nature of Proceedings under Section 125 of Cr.P.C., 1973 (earlier Section 488 of Cr.P.C., 1898)**

(i) A Five Judge Bench of Hon’ble Supreme Court in a judgment titled as **S. Sethurathinam Pillai vs. Barbara alias Dolly Sethurathinam and another, 1971(3) SCC 923;** has held as under:-

“3. xxxxxxxxxxxx. The order passed in an application filed under Section 488 of the Code of Criminal Procedure is a summary order which does not finally determine the rights and obligations of the parties thereto. It is an order made in a proceedings under a provision enacted with a view to provide a summary remedy for providing maintenance, and for preventing vagrancy. The decision of the Criminal Court that there was a marriage between Barbara and Sethurathinam and that it was a valid marriage will not operate as decisive in any civil proceedings between the



parties for determining those questions. We are informed at the bar that Sethurathinam has lodged a suit in the Civil Court for decision on the factum and validity of the marriage. Since the order of the Criminal Court is a summary order and is not conclusive between the parties, we do not think it necessary to decide whether on the evidence of the High Court was justified in reaching the conclusion it has reached. xxxxxxxxxxxx”

(ii) In a judgment rendered by Hon’ble Supreme Court in ***NagendrappaNatikar vs. Neelamma,2013 AIR (Supreme Court) 1541***; it has been held as under:

“10. Section 125 Criminal Procedure Code is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children. Section 125 is not intended to provide for a full and final determination of the status and personal rights of parties, which is in the nature of a civil proceeding, though are governed by the provisions of the Criminal Procedure Code and the order made under Section 125 Criminal Procedure Code is tentative and is subject to final determination of the rights in a civil court.”

(iii) In a judgment rendered by Hon’ble Supreme Court in ***Kamala and others vs. M.R. Mohan Kumar,2018(4) RCR(Criminal) 894***; it has been held as under:

*“15. Unlike matrimonial proceedings where strict proof of marriage is essential, in the proceedings under Section 125 Cr.P.C., 1973 such strict standard of proof is not necessary as it is summary in nature meant to prevent vagrancy. In ***Dwarika Prasad Satpathy v. Bidyut Prava Dixit, 1999(4) RCR (Criminal) 577 : (1999) 7 SCC 675***, this Court held that “the standard of proof of marriage in a Section 125 proceedings is not as strict as is required in a trial for an offence under section 494 IPC. The learned Judges explained the reason for the aforesaid finding by holding that an order passed in an application under Section 125 does not really determine the rights and obligations of the parties as the section is enacted with a view to provide a summary remedy to neglected wives to obtain maintenance.”*



(II) ***Golden Rule of Interpretation/Literal Rule of Interpretation***

(i) A Five Judge Bench of Hon'ble Supreme Court in a judgment titled as ***Chief Justice of A.P. vs. L.V.A. Dikshitulu, 1979(2) SCC 34*** has held as under:-

“63. The primary principle of interpretation is that a constitutional or statutory provision should be construed according to the intent of they that made it”(Coke). Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is precise and plain and thus by itself, proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean, or evocative or can reasonably bear meaning more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the Court to go beyond the arid literal confines of the provision and to call in aid other well-recognized rules of construction, such as its legislative history, the basis scheme and framework of the statute as a whole, each portion throwing light on the rest, the purpose of the legislation, the object sought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation.”

(ii) In a judgment rendered by Hon'ble Supreme Court in ***National Insurance Co. Ltd. vs. Laxmi NarainDhut, 2007(3) SCC 700***, it has been held as under:

“29. “Golden Rule”of interpretation of statutes is that statutes are to be interpreted according to grammatical and ordinary sense of the word in grammatical or liberal meaning unmindful of consequence of such interpretation. It was the predominant method of reading statutes. More often than not, such grammatical and literal interpretation leads to unjust results which the Legislature never intended. The golden rule of giving undue importance to grammatical and literal meaning of late gave place to ‘rule of legislative intent’. The world over, the principle of



interpretation according to the legislative intent is accepted to be more logical.”

III *Re: Procedure which may be adopted by a Family Court for adjudication of a lis before it.*

(i) In a judgment titled as ***Karan Puri vs. Sonika Chaudhary: Neutral Citation No.2023:PHHC:165262-DB***; this Court has held as under:-

“13. As an upshot of above discussion, the following principles of law can be culled out:

(I) Sub Section (3) to Section 10 read with Section 20 of the Family Court Act, contains non-obstante clause and gives supremacy to the provisions of the said Act, vis-à-vis the provisions of other enactments/Acts.

(II) CPC, 1908 is not applicable with its full rigours to proceedings under the Family Courts Act, 1984. In other words; a Family Court is entitled to lay down its own procedure, as warranted by facts/circumstances of a given case and it is not bound by the procedural rigours of CPC, 1908. However, while devising its such own procedure, the Family Court ought to ensure that such procedure is in consonance with the basic canons of the jurisprudence such as principles of natural justice, good conscience and equity.

(III) A Family Court is well within its powers to take into evidence any material, which in the judicial discretion of such Family Court, may be essential for effectively adjudicating a lis before it whether or not such material fulfills the requirements of Indian Evidence Act, 1872. However, while exercising such discretion, the Family Court ought to bear in mind that receiving of such material by way of evidence does not violate the basic principles of our legal system.

(IV) Order VIII, Rule 1-A CPC of 1908 is not a mandatory provision and rather it is a directive in nature only especially with respect to the proceedings under Family Court Act, 1984. A Family Court will be well within its judicial discretion to take into evidence any material in terms of sub-rule (3) of Order VIII, Rule 1-A of CPC, 1908 without any formal application for grant of leave by the defendant. However, while exercising such discretion the Family Court is required to pass a reasoned order.”

**Analysis (re law)**

8. A marriage is a solemn covenant between two people on equal footing; it is an admittance into family life which becomes a basic unit of community and nation. When children are born to this sacred covenant, the marriage does not remain an entity ensconced between the couple, but it pivots into a family wherein children's presence kindles a collective obligation for the parents, kinsfolk and even the society at large. It is not just legally binding, but a foremost moral and divine duty to provide for and support one's family. A husband cannot forsake his duty towards his wife. A wife is not a vulnerable helpless person, to be treated with commiseration, but is entitled to equal stature in marriage, family and society. A husband cannot be allowed to be derelict in his obligation to give his wife her dues. Especially, if this will otherwise lead to penury and hardship for the wife, it must be remedied beyond all other considerations. It is with this ineffable salutary objective that Section 125 of Cr.P.C., 1973/Section 144 of BNSS, 2023 has been enacted. This provision is a measure of social justice and has been specially enacted to protect the wife. It is trite law that a social statute is essentially the formidable application of equality jurisprudence, as evolved by the Parliament and the Hon'ble Supreme Court, in myriad situations brought forward before Courts where unequal parties are pitted in adversary proceedings & where the Courts are called upon to dispense justice. In such a situation, the Court has to not only be sensitive to the inequalities of the parties involved but also be positively inclined to the disadvantaged party, if the imbalance were to result in miscarriage of justice.



Cr.P.C., 1973/Section 144 of BNSS, 2023; would definitely fall in this category, which aims at empowering the disadvantaged & at achieving social justice or equality and dignity of the individual. There can be no doubt that this statute, calling for consideration by the Court, is not petrified print but vibrant compelling words with social functions to fulfill. Accordingly, in interpreting law of a kind, as Section 125 of Cr.P.C., 1973/Section 144 of BNSS, 2023 is, the Court must not only proceed vide the dictionary or etymological meaning assigned to the words employed by the legislature but dispense justice by keeping in mind, at all times, not only the legal obligations but also moral and social obligations of a husband *qua* his wife. Instead of being fettered by sheer technicalities, it would be paramount to keep in view the interest(s) of wife.

9. At the same time, it must be borne in mind that the Court ought not to take a lopsided view without taking into account the statutory mandate contained in Section 125(4 and 5) of Cr.P.C./Section 144(4 and 5) of BNSS, 2023. The statutory recognition of the right of the husband to resist the payment of maintenance has not been altered ever since the enactment of Cr.P.C. of 1898. A comparative analysis of the relevant provisions comprised in Section 488 (4 and 5) of Cr.P.C., 1898; Section 125 of Cr.P.C., 1973 (as it stood before 24.09.2001 and after 24.09.2001) as also Section 144 (4 and 5) of BNSS, 2023 reflects that this defence/right of the husband has not been taken away by the legislature. In-fact, after incorporation of the provision of “*interim*” maintenance in the amendment carried out into Section 125 of Cr.P.C., 1973 w.e.f 24.09.2001, the husband has a valid right



be awarded in case the wife is living in adultery. The Golden Rule of Interpretation (Rule of Legislative Intent); which has repeatedly found favour with the Hon'ble Supreme Court; as enunciated in the judgments of Dikshitulu (supra) and Laxmi NarainDhut (supra) clearly goes on to show that when the legislature has provided, by way of statutory mandate in Section 125 (4 and 5) of Cr.P.C, 1973 & Section 144 (4 and 5) of BNSS of 2023, that the husband can raise the plea of adultery by wife, to oppose the petition for grant of interim maintenance and litigation expenses. The statutory scheme reflects a balanced approach, ensuring that justice is not only served to the wife but also does not unduly burden the husband when marital obligations are breached by wife's conduct. Indubitably, a marriage is an equitable and mutual covenant. The spouses have certain obligations towards each other and enjoy equal rights too, emanating from the marriage. Just as a wife is not a helpless person only deserving of benevolent commiseration from her spouse; a husband is not to be assumed *asa sumpter*, to bear the financial duties under any or all circumstances, on account of being a male. In other words, if the implacable cause of the collapse in the marriage is adultery committed by the wife, it would be *sans* reasonableness to shackle the husband with obligations of maintenance.

10. An institution like marriage heavily relies on the commitment, loyalty and faithfulness of partners. Among all the religions and all the countries; marriage has been given a pious and sacred position. Therefore, if either of the spouses commits adultery, they are not only breaking the promises that were made to each other but also ruining the sanctity of the

marriage. The word adultery is derived from the Latin word



‘*Adulterium*’ which is termed as the extramarital sex and is considered objectionable on social, religious, moral, as well as, legal grounds. Merriam-Webster dictionary defines adultery as “voluntary sexual intercourse between a married person and someone other than that person’s current spouse or partner.”

11. Indubitably, the proceedings undertaken under Section 125 of Cr.P.C./Section 144 of BNSS are summary in nature. The nature of these proceedings are, indubitably summary. The Hon’ble Supreme Court in the five Judge Bench judgment of ***Barbara alias Dolly Sethurathinam***(supra) has unequivocally held that the procedure adopted in a petition under Section 488 of 1898. Cr.P.C. is summary one and does not finally determine the rights/obligations of rival parties as these proceedings are aimed at being a summary/expeditious remedy for preventing vagrancy. To the similar effect is the ratio decidendi of the judgments by the Hon’ble Supreme Court in the case of ***Neelamma***(supra) and ***M.R. Mohan Kumar*** (supra).

12. The burden of proving the act of adultery by a spouse is on the one who raises the same. It goes without saying that adultery, which mostly happens behind closed doors, is difficult to be proved beyond all reasonable doubts. Furthermore, in case of adultery, direct evidence is generally difficult to get and, therefore, reliance on circumstantial evidence is often sought for. It deserves to be noticed herein, that the actions of adultery by its very nature thereof are likely to be conducted clandestinely, covertly and behind closed-doors, as it were. Just as Shakespeare advised, “*Let every eye negotiate for itself/And trust no agent.....*” (Much Ado About Nothing; Act



II, Scene I), all the actions of adultery can be perceived, deciphered and ascertained by discerning observations within the context. To base the case on circumstantial evidence, it is essential that there must be circumstances amounting to proof that opportunities could be used, such as the association of the parties being so clear, that adultery might reasonably be assumed as the result of an opportunity for its occurrence. *Ergo*, proving adultery by preponderances of possibilities is sufficient.

13. Interpretation of law ought to be in accordance with the veritable tenets of justice, equity and good conscience & must not be shackled by obsolete interpretation(s) that have lost their relevance in the present era. Evidentiary material emanating from social media timelines and profiles can also be relied upon by rival parties to substantiate their case. The current social life is now extensively and even openly, technologically, engaged on the social media platforms/apps videlicet Facebook, Twitter, Instagram, Whatsapp. et al, while the social network footprints (including photographs, textual exchanges) can be well-mapped for evidentiary purposes as also can be taken a judicial notice of. The ratio decidendi of the judgment of this Court in case of **Karan Puri** (supra) clearly enunciates that a Family Court is well within its jurisdiction to take into evidence any material, which in the judicial discretion of such Court, may be essential for effectively adjudicating a *lis* before it, whether or not such material fulfills the rigours of Indian Evidence Act, 1872/The Bharatiya Sakshya Adhiniyam, 2023. Even if it were to be possible to manipulate or morph photos, all and any photographic and social media material cannot be ignored outrightly on such a supposition. This Court must immediately sound a word of caution



herein. In case the Court deems it appropriate to take into account such material, at the stage of determination of interim maintenance and expense of proceedings, the Court ought to accord cogent reasons therefor showing due and manifest application of judicial mind to the facts of a given case. To recall the immortal words of Lord Cardozo:

“The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to ‘the primordial necessity of order in the social life.’ Wide enough in all conscience is the field of discretion that remains.”

No exhaustive set of guideline(s) to govern, the exercise of this aspect by a Court, can possibly be laid down, however alluring this aspect may be. It is neither fathomable nor desirable to lay down any straightjacket formula in this regard. To do so would be to crystallize into a rigid definition, a judicial discretion, which for best of all reasons deserve to be left undetermined. Any attempt in this regard would be, to say the least, a *quixotic* endeavour. Circumstantial flexibility, one additional or different fact, may make a sea of difference between conclusions in two cases. Such exercise would thus, indubitably, be dependent upon the factual matrix of the particular case which the Court is in seisin of, since every case has its own peculiar factual conspectus.

14. As a sequel to above-said discussion the following postulates emerge:

I. The husband (non-applicant in maintenance proceedings) is entitled to raise the plea of adultery by the wife; in proceedings pertaining to



adjudication of interim maintenance and expense of proceedings (more commonly referred to as litigation expenses); so as to plead that such prayer by wife be dismissed.

- II. Since the proceedings undertaken under Section 125 of Cr.P.C/Section 144 of BNSS, 2023 are summary in nature, the evidence brought forward by the husband should meet the test of preponderance of possibilities, in a case where the plea of adultery by wife is raised by the husband (non-applicant in maintenance proceedings).
- III. Where the maintenance proceedings are being dealt with by a Family Court, such Court is entitled to take into account any material, which in the judicial discretion of such Court, may be essential for effectively adjudicating a *lis* before it, whether or not it meets with the requirements of Indian Evidence Act, 1872/The Bharatiya Sakshya Adhiniyam, 2023.
- IV. The material pertaining to social media etc., produced by the husband, in order to prove the adultery of wife, can be looked into by the Court even at the stage of adjudication of interim maintenance and expense of proceeding (litigation expenses).
- V. No exhaustive guidelines can be laid-down for exercise of aforesaid judicial discretion by a Court as every case has its own unique factual conspectus. There is no gainsaying that an order passed by the Court, while exercising such discretion, must be a speaking order clearly giving out reasons therein & must be in consonance with the basic canons of Natural Justice, good conscience and equity.

**Analysis (re-facts of the present case)**

15. Now this Court reverts to the facts of the case in hand to ratiocinate thereupon.

16. The learned counsel for the petitioner (herein) husband had relied upon photographs (copies whereof have been appended as Annexure P-1 with the petition) to support his plea that these clearly reflect a relationship, on the lines of being in a nuptial knot, between the respondent (herein) wife and one Karampal Singh. These photographs show, the respondent (herein)-wife and one Karampal Singh posing for overview shots with other people, in accordance with photographic practices of documenting and photographing weddings and such like occasions. The attire, ritualistic jewellery and close-up shot show their comportment alike to a couple. Hence, the perusal of these photographs, does reflect, that the respondent (herein)-wife has a kind of relationship, akin to being spouses, with a person other than the petitioner (pleaded to be one Karampal Singh). Further, it is clearly deducible from the petition (under Section 13 of HMA, 1955) filed by the respondent (herein) wife, wherein she herself has stated that she is living with one Karampal Singh (with whom she is seen in the photographs referred to earlier). Though there is denial by the respondent (herein)-wife to the factum of her living in any kind of adulterous relationship, but no plausible explanation has come forward on her behalf regarding the photographs as also as to in what capacity is she living alongwith the said Karampal Singh. From the totality of the facts and circumstances of the case, especially the photographs when evaluated in



initiated by her, it is clear that the respondent (herein)-wife is not entitled to receive interim maintenance and litigation expenses from the petitioner (herein). *Ergo*, the impugned order deserves to be set-aside.

Decision

17. The present revision petition is allowed; impugned order dated 07.08.2023 passed by Principal Judge, Family Court (Camp Court), Rajpura, Punjab is set-aside and the application filed by the respondent (herein)-wife for grant of interim maintenance and litigation expenses is dismissed.
18. Any observations made and/or submissions noted hereinabove shall not have any effect on the merits of the case and the Family Court shall proceed further, in accordance with law, without being influenced therefrom.
19. Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

September 27, 2024
Ajay

Whether speaking/reasoned:	Yes
Whether reportable:	Yes