



**247(2) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR(F)-144-2024 (O&M)
Date of Decision: 27.08.2024**

JAGDISH KAUR @ KANWALJIT KAUR

...PETITIONER

V/S

RAGHBIR SINGH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Omkar Chauhan, Advocate
for the petitioner.

Mr. Rishav Jain, Advocate with
Mr. Arun Jindal, Advocate
for the respondent.

HARPREET SINGH BRAR J. (ORAL)

1. The petitioner is challenging the order dated 22.11.2023 passed by learned Additional Principal Judge, Family Court, Ambala, in maintenance case No. 22 of 2019, vide which the application filed under Section 127 of Cr.P.C. by the petitioner-wife seeking enhancement of maintenance has been dismissed.

2. The marriage between the petitioner-wife and respondent-husband was solemnized on 29.02.2000. Out of the said wedlock, one child was born. However, matrimonial dispute ensued between the couple and the petitioner-wife filed a petition under Section 125 Cr.P.C. seeking maintenance. Application was allowed and maintenance to the tune of Rs. 250/- per month was awarded to the petitioner and Rs. 500/- was awarded to the minor child. Thereafter, petitioner filed an application under Section 127 of Cr.P.C. seeking enhancement of maintenance allowance. Thereupon then Judicial Magistrate

1st Class, Ambala, allowed the said application and enhanced the maintenance



amount to Rs. 1,500/-. Thereafter, petitioner filed another application under Section 127 of Cr.P.C. seeking further enhancement and the same was accepted and maintenance was enhanced to Rs. 8,000/- per month and lastly on filing of another application under Section 127 Cr.P.C., the amount of maintenance was further enhanced by this Court to the tune of Rs. 10,000/- per month vide order dated 16.11.2018. Thereafter, the petitioner has preferred another application under Section 127 of Cr.P.C. seeking further enhancement of maintenance amount and the said application has been dismissed vide impugned order dated 22.11.2023 passed by learned Additional Principal Judge, Family Court, Ambala. Aggrieved by the same, petitioner-wife has preferred this revision petition.

4. Learned counsel for the petitioner-wife contends that respondent was receiving salary of Rs. 1,00,000/- per month and is now receiving pension and earning rental income from several properties, while the petitioner-wife has herself raised their child and therefore, she is entitled for enhancement of maintenance allowance from Rs. 10,000/- as awarded by this Court. It is further averred that petitioner is suffering from many ailments due to her old age and has no other source of income. The cost of living has become costly and it is not possible for her to survive in Rs. 10,000/- as maintenance.

5. Learned counsel for the respondent-husband *inter alia* contends that petitioner is earning Rs. 20,000/- per month from stitching and embroidery and getting pension and rental income of Rs. 15,000/- per month. On the other hand, the respondent has retired from the Bank and is residing with his brother Gurnam Singh. Therefore, prayer was made for dismissing the present revision petition.



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 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 is of the opinion that learned Family Court, Ambala has rightly dismissed the application under Section 127 of Cr.P.C. filed by the petitioner-wife seeking enhancement of maintenance allowance, after taking into consideration that respondent-husband is getting pension of Rs. 41,000/-, while the petitioner-wife also has no other liability as her son has become major and she too has a house and she is already getting maintenance to the tune of Rs. 10,000/- per month as ordered by this Court vide order dated 16.11.2018. Learned counsel for the petitioner has not been able to indicate any perversity in the impugned order which warrants interference by this Court. Accordingly, this revision petition is hereby dismissed being bereft of any merit.

(HARPREET SINGH BRAR)
JUDGE

27.08.2024
Ajay Goswami

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