



CRR(F)-319-2019

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR(F)-319-2019 (O&M)

Date of decision: 13.11.2024

Kanta Rani @ Seema and another

...Petitioners

V/s

Kanwal Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. P.S. Rana, Advocate for the petitioners.

Mr. HPS Ishar, Advocate for the respondent.

SUMEET GOEL, J.

1. Present revision petition has been preferred against the order dated 26.09.2018 passed by the learned District Judge (Addl. Family Court), Karnal (hereinafter to be referred as the 'concerned Family Court') seeking enhancement of the maintenance allowance awarded by the said order from the date of petition i.e. 01.09.2015. The petitioner-wife filed a petition under Section 127 of Cr.P.C., 1973, seeking enhancement of the maintenance allowance which was earlier granted vide order dated 03.02.2011 under Section 125 of Cr.P.C., 1973 whereby Rs.8,000/- per month (i.e. Rs.5,000/- to petitioner No.1-wife and Rs.3,000/- per month to petitioner No.2-minor daughter) was awarded as maintenance allowance against the respondent-husband. Vide the impugned order; the Family Court has enhanced the amount of maintenance to Rs.15,000/- (i.e. Rs.10,000/- per month to petitioner No.1 and Rs.5,000/- per month to petitioner No.2) from the date of passing of the order i.e. 26.09.2018. Aggrieved, the petitioners have preferred the instant revision petition.



2. Learned counsel appearing for the petitioners has iterated that the learned Family Court should have ordered the enhancement of maintenance allowance from the date of filing of the petition i.e. 01.09.2015 rather than from the date of the order. It has been further iterated that initially, maintenance allowance of Rs.8,000/- was awarded to the petitioners on 03.02.2011. However, due to change in circumstances, particularly the increased expenses required for the education and upbringing of petitioner No.2-minor daughter, an enhancement in maintenance allowance was prayed which has rightly been allowed but from the date of order. According to learned counsel, the enhancement of maintenance allowance was made after a gap of over 04 years from the date of the earlier order under Section 125 of Cr.P.C., 1973 and hence the Family Court should have granted the enhanced maintenance allowance from the date of the filing of the petition, recognizing the financial strain on the petitioners. It has been further argued that the petitioner No.1-wife, has no independent source of income and bears the sole responsibility of caring for her minor daughter without any financial assistance. Thus, it would be in fairness if the petitioners should be granted the enhanced maintenance allowance from the date of filing of the petition. It has been further submitted that the Family Court has granted the enhancement from the date of the order itself but not from the date of petition and no reason whatsoever has been given. It is argued that the learned Family Court has committed a manifest error in granting the enhanced maintenance from the date of judgment instead of the date of filing of the maintenance petition.

3 *Per contra*, learned counsel for the respondent has argued that the Family Court, while granting the interim maintenance to the petitioners,



has completely ignored the materials placed on record before it. It has been further argued that the petitioner No.1 has sufficient source of income to maintain herself and the minor daughter. Hence, dismissal of the instant petition has been prayed for.

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

5. The challenge in the present revision petition filed on behalf of the petitioner-wife is in respect of the date from which the petitioners were ordered to be granted the enhanced maintenance allowance, so assessed, vide the impugned order. Before delving into this issue, it is pertinent to take note of the fact that the learned Family Court, while adjudicating upon the issue of enhancement of maintenance allowance under Section 127 of Cr.P.C., came to the conclusion that the petitioner-wife has no source of income and hence not capable of supporting herself as well as the minor daughter. Furthermore, the costs associated with raising a school going child (petitioner No.2 herein) were diverse and continually increasing. The prices of essential commodities had also risen significantly after the petitioners were originally granted the maintenance allowance under Section 125 of Cr.P.C., 1973. Additionally, the income of the respondent-husband (herein) had grown over the past 07 years i.e. after the passing of the earlier order granting maintenance under Section 125 of Cr.P.C., 1973. In light of these circumstances, the Family Court held that the amount of maintenance granted to the petitioners deserves to be enhanced and accordingly, the petitioners were granted the enhanced maintenance allowance of Rs.15,000/- per month (i.e. Rs.10,000/- per month to petitioner No.1 and Rs.5,000/- per month to petitioner No.2) from the date of passing of the order/judgment.



6. The aspect that vide the impugned order, the learned Family Court, has directed the amount of maintenance to be paid by the respondent, from the date of judgment/order, instead from the date of filing of petition under Section 127 of Cr.P.C., 1973, in my considered opinion is erroneous in the facts and circumstances of the present case. In this regard, it is pertinent to refer herein to the dicta of Hon'ble Supreme Court in the case of **Rajnesh vs Neha & another, 2020(4), RCR (Criminal) 879**, relevant whereof reads as under:

“116. The judgments hereinabove reveal the divergent views of different High Courts on the date from which maintenance must be awarded.

117. Even though a judicial discretion is conferred upon the Court to grant maintenance either from the date of application or from the date of the order in Section 125(2) Cr.P.C., it would be appropriate to grant maintenance from the date of application in all cases, including Section 125 Cr.P.C., 1973 In the practical working of the provisions relating to maintenance, we find that there is significant delay in disposal of the applications for interim maintenance for years on end. It would therefore be in the interests of justice and fair play that maintenance is awarded from the date of the application.

*118. In the case of **Shail Kumari Devi and Ors. v. Krishnan Bhagwan Pathak (2008) 9 SCC 632**, this Court held that the entitlement of maintenance should not be left to the uncertain date of disposal of the case. The enormous delay in disposal of proceedings justifies the award of maintenance from the date of application. In the case of **Bhuwan Mohan Singh v. Meena (2015) 6 SCC 353**, this Court held that repetitive adjournments sought by the husband in that case resulted in delay of 9 years in the adjudication of the case. The delay in adjudication was not only against human rights, but also against the basic embodiment of dignity of an individual. The delay in the conduct of the proceedings would require grant of maintenance to date back to the date of application.*

119. The rationale of granting maintenance from the date of application finds its roots in the object of enacting maintenance legislations, so as to enable the wife to overcome the financial crunch which occurs on separation from the husband. Financial constraints of a dependant spouse hampers their capacity to be effectively represented before the Court. In



order to prevent a dependant from being reduced to destitution, it is necessary that maintenance is awarded from the date on which the application for maintenance is filed before the concerned Court.

*120. In the case of **Badshah v. Urmila Badshah Godse (2014) 1 SCC 188**, the Supreme Court was considering the interpretation of Section 125 Cr.P.C., 1973 The Court held :*

"13.3. ...purposive interpretation needs to be given to the provisions of Section 125 CrPC, 1973. While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalized sections of the society. The purpose is to achieve "social justice" which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of the social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society."

121. It has therefore become necessary to issue directions to bring about uniformity and consistency in the orders passed by all Courts, by directing that maintenance is awarded from the date on which the application was made before the concerned Court. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant."

7. The above enunciated legal principle in **Rajnesh** case (supra), leaves no room for any doubt as to the date from which the maintenance amount ought to have been awarded.

8. The judgment of the Hon'ble Supreme Court in **Rajnesh** case (supra) deals primarily with a petition filed under Section 125 of Cr.P.C., 1973. The statutory provision of Section 125 of Cr.P.C., 1973 when juxtaposed with the provision of Section 127 of Cr.P.C., 1973, would reflect that the ratio decidendi of the judgment of the Hon'ble Supreme Court would apply with full vigour to a petition filed under Section 127 of Cr.P.C.,



1973. Thus, there is no room for any doubt that the enhancement/reduction of maintenance allowance awarded by virtue of an order under Section 127 of Cr.P.C., 1973 would be applicable from the date of filing of the petition under Section 127 of Cr.P.C., 1973 and not from the date of the order.

9. In view of the above discussion, the present revision petition is hereby allowed and the impugned order is modified to the extent that the petitioner No.1-wife Kanta Rani is held entitled to maintenance allowance to the tune of Rs.10,000/- per month from the date of the filing/institution of the petition under Section 127 of Cr.P.C., 1973 i.e. 01.09.2015 & the petitioner No.2-Niharika is held entitled to the maintenance allowance to the tune of Rs.5,000/- per month from the date of the filing/institution of the petition under Section 127 of Cr.P.C., 1973 i.e. 01.09.2015 till her attaining the age of majority. The amount already paid by the respondent to the petitioner-wife and the minor daughter as maintenance, shall be entitled to be adjusted in the same.

10. Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

November 13, 2024
Ajay

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No