



CRR(F)-198-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRR(F)-198-2024

Date of decision: 04.11.2024

Rakesh Kumar

...Petitioner

V/s

Navpreet and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Ritesh Pandey, Advocate for the petitioner.

Mr. Vivek Dahiya, Advocate for the respondents.

SUMEET GOEL, J. (Oral)

1. Present revision petition has been preferred against the order dated 24.05.2023 passed by the Additional Principal Judge, Family Court, Gurdaspur, Camp Court, Batala (hereinafter to be referred as the 'concerned Family Court') praying for setting-aside of the said order. Vide the impugned order; the respondents (herein) have been awarded interim maintenance at the rate of Rs.10,000/- per month (i.e. Rs.5,000/- per month to respondent No.1-wife and Rs.5,000/- per month to respondent No.2-minor daughter) to be paid by the petitioner-husband (herein) from the date of the application alongwith litigation expenses of Rs.8,000/-. The respondents (herein) had filed a petition, under Section 125 of Cr.P.C., 1973 before the Family Court, stating that they are the wife and minor daughter of the petitioner (herein) and are unable to maintain themselves and hence the interim maintenance ought to be awarded to them.

2. Learned counsel appearing for the petitioner, at the outset, submits that he is not challenging the interim maintenance awarded to the



respondent No.2-minor daughter. In this regard, learned counsel has drawn the attention of this Court to para No.10 of the grounds of revision wherein it is so specifically pleaded. Learned counsel has iterated that the Family Court, while assessing the quantum of interim maintenance, has ignored from consideration the fact that the respondent-wife is working as a pharmacist at SHC Nassarke and earning a salary of Rs.11,000/- per month. It has been further iterated that the respondent-wife had already been awarded Rs.8,000/- per month as maintenance under the D.V. Act. According to learned counsel, the Family Court while assessing the interim maintenance of Rs.5,000/- per month to the respondent-wife has failed to consider the fact that the respondent-wife possesses the same qualification as the petitioner-husband and is earning a significant amount herself. Learned counsel asserts that the findings of the learned Family Court are based on a misrepresentation of facts and the same should be set-aside. It is respectfully submitted that the respondent-wife's deliberate attempt to conceal her true financial status constitutes a gross abuse of the process of the Court. Thus, it has been prayed that the impugned order is patently illegal; suffers from material infirmities and the same should be set-aside.

3. *Per contra*, learned counsel for the respondents has iterated that the learned Family Court has rightly allowed the application seeking interim maintenance as the respondent-wife is doing the contractual job of a Pharmacist and earning a meagre amount. According to learned counsel, the respondent-wife does not possess any moveable or immoveable property.

Furthermore, the Family Court has determined the quantum of maintenance

based on the calculation of the income of the petitioner as also taken due



consideration of the relevant facts and circumstances of the case. Thus, it has been prayed that the present petition be dismissed.

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

5. It would be apposite to refer herein to a judgment passed by the Hon’ble Supreme Court titled as **Rajnesh vs. Neha & Anr.: 2021(2) SCC 324**; relevant whereof reads as under:-

“II Payment of interim Maintenance

- 1. The proviso to Section 24 of the HMA (inserted vide Act 49 of 2001 w.e.f. 24.09.2001), and the third proviso to Section 125 Cr.P.C., 1973 (inserted vide Act 50 of 2001 w.e.f. 24.09.2001) provide that the proceedings for interim maintenance, shall as far as possible, be disposed of within 60 days’ from the date of service of notice on the contesting spouse. Despite the statutory provisions granting a time-bound period for disposal of proceedings for interim maintenance, we find that application remain pending for several years in most of the cases. The delays are caused by various factors, such as tremendous docket pressure on the Family Courts, repetitive adjournments sought by parties, enormous time taken for completion of pleadings at the interim stage itself, etc. Pendency of applications for maintenance at the interim stage for several years defeats the very object of the legislation.*
- 2. At present, the issue of interim maintenance is decided on the basis of pleadings, where some amount of guess-work or rough estimation takes place, so as to make a prima facie assessment of the amount to be awarded. It s often seen that both parties submit scanty material, do not disclose the correct details, and suppress vital information, which makes it difficult for the Family Courts to make an objective assessment for grant of interim maintenance. While there is a tendency on the part of the wife to exaggerate her needs, there is a corresponding tendency by the husband to conceal his actual income.*

74. It has therefore, become necessary to lay down a procedure to streamline, the proceedings, since a dependant wife, who has no other source of income, has to take recourse to borrowings from her parents/relatives during the interregnum to sustain herself and the minor children, till she begins receiving interim maintenance.



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(j) The concerned Family Court /District Court/Magistrate’s Court must make an endeavour to decide the I.A. for Interim Maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.

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

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xxx xxx xxx xxx xxx”

6. Vide the impugned order passed by the Family Court, the aspect of interim maintenance has been decided. It goes without saying that a decision upon the aspect (especially quantum) of interim maintenance, being result of some element of estimation, has to be construed accordingly as the entitlement of the applicant (making a plea for grant of interim maintenance) cannot be based upon exact arithmetical calculations at such stage. The order granting interim maintenance is, indubitably, subject to final adjudication and it is a provisional step subject to final determination to be made on the conclusion of proceedings. In other words, the interim maintenance is only tentative & is subject to fixation of final maintenance.

7. Indubitably, the relationship between the parties is not in dispute. It is also not disputed that the minor daughter i.e. respondent No.2 is in the care and custody of respondent No.1-wife. The facts of the instant case reflect that vide the impugned order; the respondents, who are the wife and minor daughter of the petitioner, have been granted interim maintenance



at the rate of Rs.10,000/- per month from the date of application (i.e. Rs.5,000/- per month to respondent No.1-wife and Rs.5,000/- per month to respondent No.2-minor daughter). While going through the impugned order, it transpires that both the parties (i.e. the petitioner-father and the respondent-wife, have placed on record the affidavits with regard to the disclosure of their respective incomes, assets and liabilities in terms of the judgment of the Hon'ble Supreme Court titled as ***Rajnesh vs. Neha & Anr.:*** ***2021(2) SCC 324***. As per the said affidavits, the petitioner-husband is running a Chemist shop and had shown his monthly income as Rs.25,000/- while the respondent-wife is working as a Pharmacist on contract basis and drawing Rs.11,000/- as monthly salary. The Family Court observed that although the respondent-wife (herein) works as a pharmacist on a contractual basis, she is still entitled to maintain the same level of comfort and quality of life that she would have enjoyed had she been living with the petitioner-husband (herein). Furthermore, as a father, the petitioner (herein), shares an equal responsibility for the well-being of his minor daughter, who reportedly has a 100% hearing impairment and requires ongoing medical treatment. It is both a legal and moral duty of the petitioner-husband (herein) to provide financial support to his wife and minor daughter, ensuring their stability and welfare. In light of the overall circumstances and the petitioner-husband's own affidavit, the Family Court assessed his minimum monthly income from operating his medical store as Rs.25,000/- per month. Consequently, the petitioner-husband (herein) is accountable for providing adequate maintenance to support the basic needs of his wife and minor daughter.

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91. In **Shailja & Anr. v. Khobbanna**, (2018) 12 SCC 199. See also Decision of the Karnataka High Court in **P. Suresh v. S. Deepa & Ors.**, 2016 CriLJ 4794 this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The Court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. **Chaturbhuj v. Sita Bai**, (2008) 2 SCC 316 Sustenance does



not mean, and cannot be allowed to mean mere survival. **Vipul Lakhanpal v. Smt. Pooja Sharma, 2015 SCC Online HP 1252.**

92. In **Sunita Kachwaha & Ors. v. Anil Kachwaha (2014) 16 SCC 715** the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

93. The Bombay High Court in **Sanjay Damodar Kale v. Kalyani Sanjay Kale 2020 SCC Online Bom 694** while relying upon the judgment in *Sunita Kachwaha (supra)*, held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.

94. An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in **Chander Prakash Bodhraj v. Shila Rani Chander Prakash, AIR 1968 Delhi 174**. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the Court.

95. This Court in **Shamima Farooqui v. Shahid Khan (2015) 5 SCC 705** cited the judgment in *Chander Prakash (supra)* with approval, and held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife.

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Thus, even the mother is working; it does not mean the husband will be absolved from taking responsibility of his wife. The husband is legally bound to maintain his wife according to his status and lifestyle.

7.2 Another assertion made on behalf of the petitioner that the respondent-wife has already been awarded Rs.8,000/- per month as



maintenance under the D.V. Act., has already been addressed by the Family Court in paragraph No.6 of the impugned order. The Family Court observed that the interim maintenance amount would be subject to adjustment against any maintenance awarded to or received by the respondents (herein) from the petitioner-husband (herein) in any related maintenance proceedings. The present petition having been filed to impugn the order vide which interim maintenance was granted, it is not appropriate for this Court to delve deep into these contentions at this stage or determine their impact (if any) on the maintenance proceedings, pending before the Court below.

7.3 Therefore, keeping in view the facts and circumstances of the case, this Court is of the considered opinion that the Family Court had taken into account not only the financial capability of the petitioner but also the financial status of the parties, comprehensive efforts required to raise a child as well as the high costs of living now a days. At this juncture, the contentions raised by learned counsel for the petitioner in the present petition with regard to factual aspect, are matter of trial and no ratiocination on the same can be effectively made at this stage. The same can only be ascertained after the parties adduce evidence. It is also apparent from the record that the order under challenge is only interim in nature and not a final decision on the maintenance petition. The amount of maintenance awarded is always subject to the adjustment which will depend on the final outcome of the maintenance petition filed by the respondent.

7.4 Considering the facts and circumstances of the case, the amount of Rs.10,000/- per month, which has been directed to be paid by the petitioner (herein) to the respondents, vide the impugned order cannot be



said to be on the higher side and is rather just and appropriate in the facts/circumstances of the case.

8. In view of above, the interim maintenance granted by the Family Court does not call for any interference. Accordingly, the instant petition is hereby dismissed.

9. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case and the Family Court shall proceed further, in accordance with law, without being influenced with them.

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

(SUMEET GOEL)
JUDGE

November 04, 2024
Ajay

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