



IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

214

CRR-F-193-2024(O&M)

Date of order: 21.11.2024

Dolly Chouhan @ Chauhan & Another

.....Petitioner(s)

Vs.

Sandeep Rana

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Balbir Kumar Saini, Advocate
for the petitioners.

Mr. Karan Singla, Advocate
for the respondent.

Nidhi Gupta, J.

Prayer in the present petition is for modification of order dated 02.01.2024 passed by the learned Principal Judge, Family Court, Panchkula, whereby in a proceeding under Section 125 Cr.P.C., the petitioners have been granted interim maintenance of Rs.6,000/- per month (Rs.3,000/- each per month) from the date of filing the application i.e. 10.08.2022.

2. Learned counsel for the petitioners inter alia submits that the impugned maintenance is on the lower side as the respondent is earning more than Rs.3,40,000/- from his shop, rental income from shops and house, and lease income from his agricultural land. It is submitted that the respondent is a Graduate, and he has no liabilities. On the other hand, although the petitioner No.1 is a Diploma Holder in Computer Software however, she is unable to work as she has the responsibility of bringing up

the 8-year-old minor daughter/petitioner No.2 herein. Learned counsel further refers to the Affidavit of Income, Assets and Liabilities filed by petitioner No.1 before the learned Family Court (Annexure P3) wherein the expenses incurred by the petitioner on the minor child/petitioner No.2 as mentioned in Part E are about Rs.14,000/- per month. Besides this, the petitioners also have monthly expenses of rent, household grocery, medical, transportation, etc. It is accordingly submitted that the maintenance of only Rs.6,000/- per month is inadequate and therefore the same be enhanced.

3. Learned counsel for the respondent opposes the prayer made on behalf of the petitioners and submits that the petitioners are not entitled to maintenance as the petitioner no.1 is well qualified. Moreover, the respondent was previously working in a shop from where he was earning Rs.9,000/- per month. It is submitted that the respondent has even been shunted out even from the said job, and presently he is unemployed. However, it is admitted that the respondent is able bodied and a Graduate.

4. No other argument is made on behalf of the parties.

5. I have heard learned counsel for the parties and perused the case file in great detail.

6. Perusal of record of the case shows that petitioner No.1 was married to the respondent on 11.05.2013. Petitioner No.2 was born out of their wedlock on 27.08.2014. Due to matrimonial discord, the parties are living separately since 21.03.2022. Present petition under Section 125

Cr.P.C. was filed by the petitioners on 10.08.2022.

7. Perusal of Affidavit of Income, Assets and Liabilities (Annexure P4) filed by the respondent before the learned Family Court shows the educational qualifications of the respondent to be Graduate. In Part A Column 7 of the said affidavit, the respondent has shown his monthly expenses to be Rs.8,000/- per month. It is incomprehensible to this Court that given the ostensible unemployed status of the respondent, then how can he be meeting his monthly expenses of Rs.8,000/-. Learned Counsel for the respondent is unable to give any reply to this. In Part C of the said Affidavit in the column for “Details of dependent family members” the respondent has written “NA”. Therefore, the respondent does not view the petitioner No.1 or even the minor child as his dependent family member.

8. Even otherwise, the said contention of the respondent that he is unable to maintain the petitioners as he is unemployed, is liable to be rejected in view of judgment of the Hon’ble Supreme Court in **“Shamima Farooqui v. Shahid Khan” (SC) : Law Finder Doc Id # 661024**, wherein it has been categorically held as follows: –

“B. Criminal Procedure Code, 1973 Section 125 Grant of maintenance to wife - Plea of husband that he was not doing job and had no means to pay cannot be accepted - These are only bald excuses - Held :-

(i) If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife.

(ii) It is the obligation of the husband to maintain his wife - He cannot be permitted to plead that he is

unable to maintain the wife due to financial constraints as long as he is capable of earning.”

9. The contention of the respondent that the petitioners are not entitled to maintenance as petitioner No.1 is well-qualified, is liable to be rejected in view of judgment of the Hon’ble Supreme Court in **“Chaturbhuj Vs. Sitabhai” Law Finder Doc ID # 135040** wherein it has been held that merely because the wife is earning something does not imply that she is not entitled to maintenance; and had granted maintenance of Rs.3,000/- per month to respondent No.1/wife. In this regard, reliance may also be placed upon judgment of this Court in **“Divesh Sapra Vs. Latika Sapra & Another” CRR-F-1834-2023 and CRR-F-587-2024 decided on 15.10.2024**, wherein it has been held by a Coordinate Bench of this Court that a professionally qualified wife cannot automatically be denied maintenance; and the entire facts and circumstances of each case have to be taken into consideration at the time of granting and determining quantum of maintenance. In the present case, the relevant factor is that the minor child is admittedly in the care and custody of the petitioner no.1. As such, petitioner no.1 is responsible not just for the emotional, mental and physical welfare of the minor child, but also has to provide for the day-to-day needs as well as for the school fees, transportation fees, extra-curricular activities, sports training, for the overall and healthy development of the child. The entire burden/responsibility cannot be shouldered single-handedly by the petitioner no.1. The respondent, being

the father is liable to contribute, at least financially in the upbringing of his daughter.

10. It is necessary to appreciate that the grant of interim maintenance is a temporary measure of social justice to help the abandoned wife and children to tide over the difficult period. It is oft-repeated and no longer res integra that Section 125 Cr.P.C. is a measure of social justice to protect abandoned wife, children and parents from vagrancy and destitution. In “**Kirtikant D. Vadodaria v. State of Gujarat & Another**” (1996) 4 SCC 479, the Hon’ble Supreme Court has 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...”

11. Again, 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, held 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...”

12. Thus, the purpose of Section 125 Cr.P.C. is to protect abandoned wives who are unable to maintain themselves from vagrancy and destitution, to grant social justice to a destitute woman, child, or infirm parents. Moreover, in view of the admitted relationship between the parties, the respondent cannot escape from his responsibility to maintain the petitioners.

13. The submission of learned counsel for the respondent before this Court that the respondent was previously working in a shop and he is no longer employed, is made out to be patently untrue and incorrect in view of the averments made by the respondent in his written statement (Annexure P2) filed by the him before the learned Family Court to the petitioners’ petition under Section 125 Cr.P.C. In Para 2 of the said written statement in the reply “On Merits” the respondent has stated that *“...It is incorrect that at the time of engagement, it was informed by the respondent and his family members that the respondent is working as Clerk with FCI Godown, Ambala Cantt and is earning Rs.26,000/- per month. It is further submitted that at the time of the marriage this thing was clearly told to the petitioner No.1 as well as her parents that the respondent is running a small shop in Ambala of mobile accessories and earning monthly income of Rs.9000/-, hence there arise no question of informing the*

petitioner No.1 and her parents that the respondent is working as Clerk with FCI...". (Emphasis mine). Clearly therefore the respondent is only seeking to mislead the Courts and avoid his responsibility qua the petitioners and is not coming before the Court with clean hands. It is the own pleaded case of the respondent that he is 'running a shop'. The income mentioned by the respondent is also misleading as, even as per daily wages the minimum wage is between ₹12–15,000/- per month.

14. Further, it appears that the respondent is habitual of making incorrect statements before the Courts as, on the last date of hearing i.e. 29.10.2024, following order was passed by this Court: –

"It is submitted by learned counsel for the respondent that the petitioners have filed an execution petition in which they are not appearing for the last two dates. It is submitted that in compliance of last order dated 07.8.2024 the respondent intends to make the payment to the petitioners before the learned trial Court, however, due to non-appearance of the petitioners, the respondent is unable to make the said payment. Accordingly, learned counsel for the petitioner is seeking one more opportunity to comply with the last order dated 07.8.2024.

Learned counsel for the petitioners vehemently opposes the submissions made by learned counsel for the respondent and on instructions submits that the petitioners are regularly appearing before the learned trial Court.

Adjourned to 21.11.2024."

15. Today, learned counsel for the petitioners has produced certified copies of zimni orders dated 03.06.2024, 22.07.2024 and 04.10.2024 passed by learned Principal Judge, Family Court, Panchkula, which are taken on record. The said zimni orders show that a wholly

incorrect submission was made by learned counsel for the respondent. The petitioners are regularly appearing before the learned Family Court. Clearly, the respondent had made the said statement on the last date of hearing only in order to delay making payment of arrears of maintenance to the petitioners.

16. Thus, keeping in view of the entire facts as noticed above, the present petition is **allowed**. The maintenance of Rs.6,000/- per month granted to the petitioners is enhanced to Rs.10,000/- per month from the date of passing of this order.

17 Pending applications, if any shall also stand disposed of.

18. However, nothing stated hereinabove shall be construed as an expression of opinion on the merits of the matter.

21.11.2024
Sunena

(Nidhi Gupta)
Judge

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