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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-276-2023 (O&M)
Date of decision: 23.07.2024

Saif Ahmed Siddiqui

... Petitioner

Vs.

Sana Ahmed Siddiqui

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. L.S. Lakhanpal, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

CRM-8861-2024

1. Present application has been filed under Section 5 of the Limitation Act for condonation of delay of 20 days in filing the revision petition.

2. In view of the averments made in the application, same is allowed and delay of 20 days in filing the revision petition is condoned.

CRM-18979-2024

3. Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for placing on record zimni



orders passed by learned Family Court as Annexure P-4.

4. In view of the averments made in the application, same is allowed and zimni orders passed by learned Family Court are taken on record as Annexure P-4 subject to all just exceptions.

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5. The present revision petition has been preferred against the impugned order dated 28.10.2022 passed by learned Additional Principal Judge, Family Court, Jalanahdar, Camp at Phillaur, vide which the application seeking setting aside of ex-parte order dated 22.07.2016 passed in the petition filed under Section 125 Cr.P.C., in which maintenance of Rs.20,000/- per month was awarded to be paid to the respondent, was dismissed.

4. The marriage between the petitioner and the respondent was solemnized on 07.11.2007 according to Muslim rites and rituals. Out of this wedlock, no child was born. However, matrimonial dispute ensued between the couple and the respondent filed a petition under Section 125 Cr.P.C. seeking maintenance of Rs.40,000/- per month. The petitioner filed a reply and contested the claim made by the respondent. When despite service, the petitioner did not turn up, learned Family Court, vide ex-parte order dated 22.07.2016, granted maintenance allowance of Rs.20,000/- per month in favour of the respondent. Thereafter, the petitioner filed an application seeking setting aside of ex-parte order dated 22.07.2016, which was



dismissed vide impugned order dated 28.10.2022. Aggrieved by the same, the petitioner has approached this Court by filing the present petition.

5. Learned counsel for the petitioner, *inter alia*, contends that the respondent mentioned wrong address of the petitioner in the petition under Section 125 Cr.P.C., therefore, notice could not be served upon him. He came to know about passing of ex-parte order dated 22.07.2016, vide which maintenance was awarded in favour of the respondent, on 15.05.2018, when one of his relative told him that warrants were issued by the Court against him and immediately, he filed the application seeking setting aside of the said order dated 22.07.2016 and the same is liable to be set aside.

6. Having heard learned counsel for the petitioner and after perusing the record with his able assistance, this Court finds no force in the arguments advanced by learned counsel for the petitioner.

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.) Vs. Veeraswamy (K.) (1991) 2 SCC 375***, speaking through Justice Fatima Beevi, opined 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.”

9. Further, a two-Judge Bench of the Hon'ble Supreme Court in ***Kirtikant D. Vadodaria Vs. 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.”



10. 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 she/he can maintain herself/himself, have sufficient funds to pursue the litigation, and not suffer at the instance of the affluent spouse.

11. 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.

12. While dealing with the issue of maintenance *in extenso*, a two Judge bench of the Hon'ble Supreme Court in ***Rajnish Vs. 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 -1 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

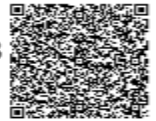
(b) Payment of Interim Maintenance

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 arder 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."

13. A perusal of the ex-parte order dated 22.07.2016 indicates that the respondent is having no source of income and she is totally dependent upon her parents. Despite service through publication, the petitioner did not appear before learned Family Court and vide order dated 18.09.2015, he was proceeded against ex-parte. Since the petitioner had not appeared and contested the petition under Section 125 Cr.P.C., learned Court below was left with no other option, but to decide the same on its own merits and vide ex-parte order dated 22.07.2016, granted maintenance to the tune of Rs.20,000/- per month to the respondent. Further, perusal of the impugned order passed by learned Family Court makes it evident that the Court below has duly considered the material placed before it for determining the quantum of maintenance. A careful and just balance has been drawn, keeping



in view the spiralling inflation rates and high cost of living corresponding to the reasonable needs of the respondent. After coming to know about ex-parte order, the petitioner filed an application for setting aside the same, which was dismissed by observing that on 24.01.2020, the petitioner examined himself and he did not turn up to face cross-examination despite availing number of opportunities along with payment of costs to be deposited with DLSA nor examined any other witness and his evidence was closed by Court order. The petitioner did not produce on record any documentary and ocular evidence to set aside the ex-parte order dated 22.07.2016.

14. Learned counsel for the petitioner has not been able to indicate any perversity in the impugned order, which warrants interference by this Court. Accordingly, the present petition is dismissed being bereft of any merit.

15. All the pending miscellaneous application(s), if any, shall also stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

23.07.2024
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No