

Neutral Citation No.2024:PHHC:018763

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

108

1. CRR(F) No.64 of 2021 (O&M)

Piyush Jain ... Petitioner

Vs.

Samta Jain and another ... Respondents

2. CRR(F) No.119 of 2021 (O&M)

Samta Jain and another ... Petitioners

Vs.

Piyush Jain ... Respondent

Date of decision: 07.02.2024

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sunil Chadha, Senior Advocate,
with Mr. Tara Dutt, Advocate,
for the petitioner in CRR (F) No.64 of 2021 and
for the respondent in CRR (F) No.119 of 2021.

Mr. P.S. Ahluwalia, Advocate,
for the petitioners in CRR (F) No.119 of 2021 and
for the respondents in CRR (F) No.64 of 2021.

MANISHA BATRA, J.(Oral)

1. This order of mine shall dispose of the aforementioned revision petitions which have been preferred against a common order dated 04.02.2021 passed by the Court of learned Additional Principal Judge, Family Court, Ludhiana in petition bearing CIS No.MNT125/688/2019 filed under Section 125 of Cr.P.C.

Neutral Citation No.2024:PHHC:018763

2. For the sake of convenience, the parties shall be referred to hereinafter as per their original nomenclature as given in the main petition.

3. Shorn of unnecessary details, the facts relevant for the purpose of disposal of the aforementioned petitions are that the petitioner Samta Jain for herself and on behalf of her minor son Hiren Jain i.e. petitioner No.2 has filed the aforementioned petition under Section 125 of Cr.P.C. on the grounds that she was married with the respondent on 16.04.2014. It was second marriage of both the parties. Just few days before the wedding, the respondent along with his parents had come to the house of the petitioner to make discussions about the marriage and during the course of conversation, the respondent and his mother had told the parents of the petitioner to give a new luxury car to the respondent as he was using an old car. Her parents had agreed to the same and a new Verna car was purchased as per the demand of the respondent. Huge amount of money was spent at the time of marriage and gold as well as diamond ornaments, silver articles were given at the time of marriage. Apart from this, gold jewellery worth lacs of rupees had been given to the respondent and his family members as well as relatives. Cash apart from domestic use articles like heater, deepfreezer, refrigerator, LED TV, Air Conditioner etc. had also been given.

4. It was further alleged that before their marriage, the respondent had represented to the petitioner that he had divorced with his first wife on account of temperamental differences but shortly after the marriage,

Neutral Citation No.2024:PHHC:018763

she came to know that infact the previous wife of the respondent was subjected to mental torture and cruelty on account of demand of dowry. She had even lodged FIR under Sections 406 and 498-A of IPC as against them and the said FIR was quashed on the basis of a compromise subsequently arrived at between them. She further alleged that all the gold ornaments given at the time of marriage were entrusted to the parents-in-law of the petitioner No.1. However, the petitioner herself was allowed to use only one gold chain and pair of earrings despite that. Whenever she asked them to give some jewellery for her use, they used to make one excuse or the other and subsequently when she demanded her jewellery and dowry articles, respondent and his mother blatantly refused to give the same to her.

5. She further alleged that the behaviour of the respondent had worsened day by day and he started physically assaulting, humiliating and insulting the petitioner on every possible opportunity. She had become pregnant and even during the advanced stage of her pregnancy, she was subjected to mental and physical torture. She kept on informing her parents about the treatment given to her by her in-laws but they had been pacifying her in order to settle her in her matrimonial home. After the birth of her son, her parents had given gold jewellery, coins, silver articles, clothing and money by way of shagun. However, the respondent and his family members were not satisfied. The behaviour of the respondent towards her kept on becoming even worse gradually and he pressurized the petitioner to give her son to his brother Vishesh Jain who

Neutral Citation No.2024:PHHC:018763

had no child due to some medical complications. She quoted several instances of her being subjected to cruelty and harassment by the respondent and his family members. It was also alleged that entire amount of money lying in her bank account had been withdrawn by the respondent by forging her signatures on her cheques. It was also submitted that the petitioner was thrown out of her matrimonial house but with the intervention of respectables, the matter was again resolved. She submitted that she has been staying alone with her minor child on the upper portion of her matrimonial house. However, the respondent had refused and neglected to maintain them and had not been giving any money to the petitioner No.1 for maintenance of her child and herself. While alleging that the respondent was a Chartered Accountant by profession who was earning a sum of about Rs.4 lacs per month and was living a luxurious life whereas, she was unemployed and had no source of income and was dependent upon her own family members for her maintenance, she prayed for directing the respondents to pay a sum of Rs.1,50,000/- per month to her and Rs.50,000/- per month to petitioner No.2 as maintenance.

6. Along with the main petition, the petitioners had moved an application for grant of interim maintenance.

7. The learned Family Court after giving opportunity to the respondent to file reply, heard arguments on the application for grant of interim maintenance and by order dated 04.02.2021, directed the respondent to make payment of an amount of Rs.25,000/- per month to

Neutral Citation No.2024:PHHC:018763

petitioner No.1 and Rs.10,000/- per month to petitioner No.2 from the date of filing of the petition as interim maintenance apart from litigation expenses to the tune of Rs.5500/- **per month**.

8. Feeling dissatisfied from the impugned order, both the parties have filed the aforementioned petitions. The respondent in his petition has submitted that the amount of interim maintenance as directed to be paid by him to the petitioners is on a very higher side and the learned Family Court committed a grave error in awarding the said amount as while passing the impugned order, it was ignored that the Income Tax Returns produced by him before it, showed that his monthly income was approximately Rs.45,000/- only and after incurring expenses to the tune of Rs.19,000/- per month on average basis, he was left with an amount of Rs.26000/- only. An exaggerated and exorbitant claim had been raised by the petitioners. The learned Family Court also ignored the fact that the petitioner No.1 was running business of selling cakes under the name of Cakes Creation since her marriage and was having sufficient source of income. He had also placed documents on record to prove that the respondent No.1 had been making payment of money for the policies which she had taken in her name. She had even given an amount of Rs.17.78 lacs to her father by showing the same as loan. Huge amount of money was credited in her bank accounts over the period of time. She also concealed the fact that there was a PPF account in her name in which she had also been depositing money.

9. The next contention which was raised by learned counsel for

Neutral Citation No.2024:PHHC:018763

the respondent is that while passing the impugned order, the learned Family Court committed a grave error by giving direction to pay litigation expenses to the tune of Rs.5500/- **per month** though neither any such claim had been made by the petitioners nor any such direction could be issued legally. With these broad submissions, it has been urged that the impugned order is liable to be set aside.

10. On the other hand, in the petition as filed by the petitioners, they have prayed for enhancing the amount of maintenance by submitting that the same is on a lower side. It is argued by learned counsel for the petitioners that the respondent in a shrewd manner had shown reduction in his annual income of the last three years in the affidavit filed by him before the learned Family Court the contents of which were actually completely contrary to the facts. He is a professional Chartered Accountant running a company by the name of M/s Rajneesh Jain and Company at Ludhiana. His Income Tax Returns for the period for 2014-15 and 2015-16 were showing his annual income to be about 15 lacs but ever since the dispute between the parties had arisen, the respondent had started showing reduced income in his Income Tax Returns to avoid liability of making payment of maintenance to the petitioners. He has further argued that the respondent owns substantial immoveable properties though one of which is purchased by him in the name of his mother. It is also vehemently argued that though the mother of the respondent is a home maker but her Income Tax Returns are showing her income to be much higher than the income as shown in the ITRs of the

Neutral Citation No.2024:PHHC:018763

respondent and this is because of the fact that he is depositing his earnings in the bank accounts of his mother/parents. It is further argued on behalf of the petitioners that substantial amount of money is to be spent on the petitioner No.2 under the heads of school fees, extra classes, drawing classes, sports/dance classes, purchase of book and stationary, clothing and toys etc. It is, therefore, argued that the amount as directed to be paid by the learned Family Court by way of interim maintenance to the petitioners is not sufficient and, therefore, it is argued that the petition as filed by the respondent is liable to be dismissed whereas the petition as filed by the petitioners deserves to be allowed.

11. I have heard learned counsel for both the parties at considerable length and have gone through the record carefully.

12. The Hon'ble Supreme Court in its celebrated judgment titled as **Rajnish v. Neha and another**, 2021 (2) SCC 324 has issued detailed guidelines about the manner in which maintenance payable under Section 125 of Cr.P.C. is to be assessed by observing that the terms of maintenance are to be decided on the basis of pleadings of the parties and on basis of some amount of guess work and while also noting that the tendency of the wife is to exaggerate her needs, whereas the husband tends to conceal his actual income. It has also been observed that the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance and dependent family members whom he is obliged to maintain under the law, liabilities if any, are required to be taken into consideration, to arrive at the appropriate quantum of

Neutral Citation No.2024:PHHC:018763

maintenance to be paid. It has also been observed in this case that while doing so, the Courts must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high cost of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife, if he is able bodied and has educational qualifications.

13. Undisputedly, while determining maintenance, status of the parties, reasonable wants of the claimant(s), the independent income and property of the claimant(s), the number of the persons, the non-applicant has to maintain, the liabilities of the non-applicant, if any, payment capacity of the non-applicant, provisions for food, clothing, shelter, education, medical expenses and treatment etc. as well as the fact that the amount should aid the applicant to live in a similar life style as he/she enjoyed in the matrimonial home, are the factors which are to be considered but at the same time, it is also to be weighed that the maintenance amount awarded must be reasonable and realistic which should neither be extravagant which becomes oppressive and unbearable for the respondent nor it should be so meager that it deprives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself and her child (if any) with reasonable comfort. In this case, both the parties had filed their respective affidavits before the learned Family Court in terms of the directions issued in **Rajnish's** case (Supra). As per the ITR submitted by the respondent husband along with his affidavit, his income is Rs.3 lacs per year. He has

Neutral Citation No.2024:PHHC:018763

also submitted that he is earning a sum of Rs.25,000/- per month and is living in a rented accommodation whereas the petitioner No.1 has claimed that she is not doing any work. Admittedly, she along with the minor petitioner is living in the second floor of her matrimonial house. No doubt, it is revealed that amounts of Rs.9,33,140/- and Rs.8,44,895/- respectively had been shown to be deposited in her bank account during the period from May 2014 to June 2017. However, as observed by learned Family Court, the respondent had not been able to show that these amounts of money were received from any source other than the one which was claimed by petitioner No.1 i.e. from her father. The respondent is a Chartered Accountant by profession. It is also revealed that he had been previously running a Chartered Accountancy Company though as argued by his counsel, he no more remains a partner of the same. However, it cannot be assumed that he is earning a sum of Rs.25,000/- per month only especially when in his petition itself he has submitted that his monthly income is Rs.45000/- approximately. Evidence is yet to be led by the parties before the Family Court for proving their exact income. The respondent has also not been able to show that the petitioner No.1 is still doing the business of cake making and is earning any amount of money. She might be capable of earning. However, due to that reason, she cannot be denied maintenance by her husband nor the same can operate as a bar from being awarded maintenance by her husband.

14. The fact can also not be ignored that the order granting interim

Neutral Citation No.2024:PHHC:018763

maintenance is subject to final adjudication on the main petition and it is only a provisional maintenance subject to final determination to be made on the conclusion of proceedings. The respondent has not been able to show before the Family Court that he has liability to maintain anyone else apart from the petitioners. The petitioner No.1-wife is entitled to lead a life in the same manner as she would have lived while residing with the respondent and he cannot take subterfuges to deprive her of benefit of living with dignity. It is his sacrosanct duty to render financial support to his wife and she is entitled to maintain a standard of living which is neither luxurious nor penurious but yet at par with the dignity and status of her husband.

15. So far as the petitioner No.2 is concerned, the learned Family Court awarded interim maintenance to the tune of Rs.10,000/- per month to him. It cannot be ignored that whatever may be the dispute between the husband and the wife, their child cannot be made to suffer. The liability and responsibility of the father to maintain the child continues till he attains the age of majority. More so, the petitioner No.2 has a right to be maintained as per the status of his father. Keeping in view that the respondent is a Chartered Accountant by profession and is running an office in his residential premises in Ludhiana though presently, he is not residing therein and his previous income tax record, I am of the considered opinion that the amount of money which is directed to be paid by the respondent to petitioners as interim maintenance is proper. The same can neither be stated to be insufficient nor excessive rather the same

Neutral Citation No.2024:PHHC:018763

at this stage can be considered to be sufficient to meet his day to day requirement.

16. Keeping in view the facts and circumstances of the case, I am of the considered opinion that the learned Family Court had rightly directed the respondent-husband to pay an amount of Rs.25,000/- per month to the petitioner No.1-wife and Rs.10,000/- per month to his son who is school going and this amount cannot be stated to be excessive or inconsistent with the status of the respondent and is bare minimum and commensurate with the day to day requirement of studies and medical expenses etc. of the minor petitioner also as well as his commitment to meet the needs and requirement of his wife as well as child. It is well settled that order granting maintenance to helpless wife and child should not be lightly interfered with unless any illegality or manifest injustice is made out. No such illegality is, however, made out in this case in the impugned order. Therefore, while upholding the order of the learned Family Court, it is held that the claims made by the petitioners for enhancement in the amount of interim maintenance and by the respondent for setting aside the impugned order qua payment of any maintenance, do not deserve to be allowed. However, at this stage, it would be proper to clarify that the learned Family Court had also directed the respondent to pay litigation expenses to the tune of **Rs.5500/- per month**. In my considered opinion, the order as passed by learned Family Court cannot be stated to be sustainable in the eyes of law to that extent because if litigation expenses are directed to be paid, the same have to be

Neutral Citation No.2024:PHHC:018763

assessed for one time and the husband cannot be made to suffer by becoming liable to pay the same @Rs.5500/- per month irrespective of the fact that any litigation remains pending between the parties or not. Therefore, the order of Family Court is modified to that extent and it is ordered that the respondent-husband would be liable to pay amount of Rs.5500/- as litigation expenses for one time only in the main petition and not per month. Therefore, the order passed by learned Family Court is modified to that extent only and revision petitions are dismissed.

17. Miscellaneous application(s), if any, also stand disposed of.

07.02.2024
manju

(MANISHA BATRA)
JUDGE

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