



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

**CRR(F)-242-2023**

**Date of decision: 20.08.2024**

**ASHOK HANDA**

**...PETITIONER**

**V/S**

**MONIKA NAYYAR**

**...RESPONDENT**

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Himanshu Jain, Advocate  
for the petitioner.

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**HARPREET SINGH BRAR, J. (ORAL)**

1. The present petition has been preferred against judgment dated 13.12.2022 passed by learned Family Court, Panchkula, under Section 125 of the Cr.P.C., vide which, the maintenance of Rs.10,000/- per month was awarded to the respondent, wife of the petitioner till the date of decision of the case and thereafter, Rs.15,000/- per month till the time she gets remarried.

2. The marriage between the petitioner and respondent was solemnised on 31.10.2013 at Panchkula, in accordance with Hindu rites and ceremonies. Out of this wedlock, no child was born. However, matrimonial dispute ensued between the couple and respondent filed a petition under Section 125 Cr.P.C. seeking maintenance. The petitioner filed a reply and contested the claim made by the respondent. The learned Family Court vide order dated 13.12.2022 granted maintenance of Rs.10,000/- per month in favour of the respondent, till the date of decision of the case and thereafter, Rs.15,000/- per month. Aggrieved by the same, the petitioner has approached this Court by filing the present petition.



3. Learned counsel for the petitioner *inter alia* contends that respondent-wife is working as Chartered Accountant and she is earning handsomely. The factum of her income has been concealed by her. The learned trial Court has fell into grave error by awarding the maintenance to the respondent, which is not in consonance with the income of the petitioner.

4. Having heard the 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.

5. 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 falls within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India.

6. 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, opined that 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.”*

A two-Judge Bench of the Hon’ble Supreme Court in ***Kirtikant D. Vadodaria v. 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.”*

7. 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.

8. While dealing with the issue of maintenance *in extenso*, a two Judge bench of the Hon'ble Supreme Court in ***Rajnesh v. Neha and another*** (*supra*), 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 order 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."*

9. A perusal of the impugned order passed by the learned Family Court makes it evident that the Court below has duly considered the material placed before it for determining the quantum of maintenance. The learned Family Court has rightly observed that as per the affidavit of respondent, she has income of Rs.2,734/- per month in the shape of interest on post office scheme. On the other hand, as per the written statement, the petitioner is earning Rs.40,000/- to 50,000/- per month and he has taken a ground that he has availed a loan and he is paying instalment of Rs.41,764/- per month. As per the settled law only statutory deductions are to be excluded while assessing the income of the husband. Any EMI paid towards the loan taken by the husband cannot be excluded while assessing his actual income.

10. It is further significant to note that petitioner has liability towards repayment of loan is not material as per decision of our Hon'ble High Court in ***Mukesh Kumar vs. Rekha Rani and another, 2018(3) RCR (Criminal) 135*** wherein, it was held that "***a person cannot be permitted to wriggle out of his statutory liability by way of availing huge loans and reducing the substantial amount of salary for repayment of the same every month.***"

11. Thus, 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. 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 revision petition is dismissed being bereft of any merit.

August 20, 2024  
*manisha*

(HARPREET SINGH BRAR)  
JUDGE

- |      |                           |        |
|------|---------------------------|--------|
| (i)  | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable        | Yes/No |