



228 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHANDIGARH

CRR(F)-273-2023 (O&M)
Date of decision: 23.09.2024

KRISHAN BATHLA

...PETITIONER

V/S

AVNI THROUGH HER MATERNAL GRANDFATHER
SH. PRITHVI RAJ CHAWLA

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Arun Chander Sharma, Advocate
for the petitioner.

Mr. Surinder Singh Virk, Advocate
for the respondents.

HARPREET SINGH BRAR J. (ORAL)

1. The petitioner is challenging the order dated 18.01.2023 passed by learned Additional Sessions Judge, Principal Judge, Family Court, Panipat in case bearing No. MNT/11/2019 titled as *Avni Vs. Krishan Bathla* whereby petitioner was directed to pay maintenance of Rs. 20,000/- per month to the respondent-minor daughter of petitioner.

2. The marriage between the petitioner and mother of respondent-minor daughter was solemnized on 24.01.2015. One female child i.e. respondent herein was born from the wedlock. However, matrimonial dispute ensued between the couple and mother of respondent was turned out from the matrimonial home by the petitioner in the month of March 2015, when she was pregnant. The mother of respondent died on 16.10.2016 following a long disease. Therefore the respondent, who at present is staying in the care and custody of her maternal grandfather, filed a petition under Section 125 Cr.P.C. seeking maintenance. Petitioner-father contested the claim made by respondent and filed reply to the said petition. Learned Family Court, Panipat vide



impugned order dated 18.01.2023 awarded maintenance of Rs. 20,000/- per month to the respondent-minor daughter of petitioner. Aggrieved by the same, petitioner has preferred this revision petition.

3. Learned counsel for the petitioner-husband *inter alia* contends that respondent i.e. maternal grandfather of minor daughter has no authority to file the present petition seeking maintenance from the petitioner on behalf of the minor child as he was never appointed as Guardian of the minor child. Further, the petitioner has never turned his wife, out of the matrimonial home, rather she willingly left the matrimonial home without any justifiable cause. As such, in view of the provisions contained in Sub-Section 4 of Section 125 of Cr.P.C., the petitioner cannot be held liable to pay any maintenance to respondent-minor daughter. Further, the minor daughter of the petitioner has been forcibly detained by her maternal grandfather and the petitioner has already instituted a petition seeking custody of her minor daughter.

4. Per contra, learned counsel for the respondent opposes the prayer made by learned counsel for the petitioner on the ground that since the birth of minor daughter, the respondent-maternal grandfather is taking care of minor daughter and he has no source of income.

5. I have heard the learned counsel for the parties and gone through the case file with their able assistance.

6. 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.

7. 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.”

8. 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 the she/he can



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

9. 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.

10. 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 (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 -I 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."

11. Having heard learned counsel for the parties and after perusing the record, this Court finds no force in the arguments advanced by learned counsel for the petitioner. The perusal of record transpires that minor daughter of the petitioner is residing with her maternal grandfather. The petitioner himself has contended that he has filed a petition seeking custody of her minor daughter from her maternal grandfather. As such, in view of the provisions contained in

Order 32 Rule 1 of the Code of Civil Procedure, a petition on behalf of minor

can be instituted in his/her name by his next friend. Further, the learned Court below has rightly relied upon unrebutted evidence that the income of the petitioner is Rs. 40,000/- to Rs. 50,000/- per month, who is running a shop of Seeds and Fertilizers and his minor daughter is a school going child, studying in Dr. M.K.K. Arya Model School, Panipat. Learned counsel for the petitioner has not been able to indicate any perversity in the impugned order which warrants interference by this Court. Accordingly, this revision petition is hereby dismissed being bereft of any merit.

12. Pending CRM(s), if any, are also disposed of accordingly.

September 23, 2024		(HARPREET SINGH BRAR)
<i>Ajay Goswami</i>		JUDGE
(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No