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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-256-2023 (O&M)
Reserved on: 18.07.2024
Pronounced on: 19.07.2024

Aashish Malhotra

...Petitioner

Versus

Divya Malhotra and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Puneet Sharma, Advocate for
for the petitioner.

Mr. Jasraj Singh, Advocate
for the respondents.

HARPREET SINGH BRAR, J. (ORAL)

1. Present petition has been preferred against maintenance granted vide impugned order dated 17.10.2021 passed by learned Additional Principal Judge, Family Court, Hoshiarpur, under Section 125 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), vide which maintenance to the tune of Rs.20,000/- per month was awarded to the respondents i.e. wife (awarded Rs.10,000/- per month) and two minor daughters (awarded Rs.5,000/- each per month) to be paid by the petitioner.

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2. The marriage between the petitioner and respondent No.1 was solemnized on 13.10.2008 in accordance with Hindu rites and ceremonies. Two daughters were born out of this wedlock. Soon after the wedding ceremony, matrimonial dispute ensued between the couple and the respondents filed a petition under Section 125 Cr.P.C. seeking maintenance. The petitioner filed a reply and contested the claim made by the respondents. However, the petitioner later on abandoned the proceedings. As such, learned Family Court proceeded ex-parte against the petitioner and vide order dated 17.10.2021 granted maintenance allowance of Rs. 20,000/- per month to the respondents. Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition.

3. Learned counsel for the petitioner, *inter alia*, contends that the impugned order dated 17.10.2022 is liable to be set aside, as it is in violation of the mandate of the Hon'ble Supreme Court in ***Rajnish Vs. Neha and another (2021) 2 SCC 324***, wherein the Hon'ble Supreme Court laid down certain directions to be complied with, including the filing of the affidavit of assets and liabilities. No such affidavit was directed to be filed in the present case. By passing the ex-parte impugned order without calling on record the affidavits and holding that the evidence of the respondents has gone un rebutted, learned Family Court erred greatly and violated the principles as prescribed in ***Rajnish***'s case (*supra*). Further, the petitioner filed an application for recalling of ex-parte order dated 01.09.2021, but that was wrongly dismissed by learned

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Family Court and as a result, the petitioner could not adequately defend himself. The petitioner is a commission based employee earning nearly Rs.9200/- per month and not Rs.55,000/- per month as wrongly assessed by learned family Court. Moreover, learned Family Court failed to take into account that the petitioner is already paying interim maintenance of Rs.15,000/- per month to respondent No.1 in collateral proceedings initiated under the Protection of Women from Domestic Violence Act, 2005 (for short 'DV Act'). Lastly, it is submitted that respondent No.1 is a highly educated and an independent person. She has a post-graduate degree i.e. M.C.A. and has also finished PGDCA. Resultantly, respondent No.1 is not entitled to any relief.

4. *Per contra*, learned counsel for the respondents argues that learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record and as such, no interference is warranted by this Court. Learned counsel further submits that the respondents had placed on record copies of the Income Tax Returns of the petitioner for the assessment years 2015–2016, 2016–2017 and 2017–2018, as per which, his gross total income was Rs.4,48,698/-, Rs.3,45,180/- and Rs.6,37,012/- respectively. This clearly goes to show that the petitioner has been earning more than Rs.55,000/- per month and as a result, he is perfectly capable of paying the maintenance amount.

5. Having heard learned counsel for the parties and after perusal of the record of the case with their able assistance, this Court finds no force in the



arguments advanced by learned counsel for the petitioner.

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.) Vs. 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.”

8. 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:

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“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. 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.

9. While dealing with the issue of maintenance in extenso, a two Judge bench of the Hon’ble Supreme Court in **Rajnesh**’s case (*supra*), laid down the criteria for determining quantum of maintenance and issued the

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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.

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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."

10. A perusal of the impugned order passed by learned Family Court makes it evident that the petitioner himself abandoned the proceedings, which were initiated by the respondents and did not rebut the evidence adduced by them. Therefore, the contention of learned counsel for the petitioner that no opportunity was granted to the petitioner to submit the affidavit declaring his assets and liabilities as well as to contest the claim of the respondents, does not merit acceptance. Learned Family Court rightly proceeded ex-parte against the petitioner. 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 respondents. However, a perusal of the record indicates that respondent No.1 has already been granted interim maintenance to the tune of Rs.15,000/- per month under DV Act vide order dated 15.11.2021 passed by

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learned Additional Chief Judicial Magistrate (Annexure P-3). Consequently, in accordance with the directions issued in **Rajnish**'s case (*supra*), the same is required to be set off against the maintenance granted under Section 125 Cr.P.C. The matter is remanded back to learned Court below for passing of fresh orders in consonance with observations made hereinabove.

11. Accordingly, the present petition is disposed of in the aforesaid terms.
12. All the pending miscellaneous application(s), if any, shall also stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

19.07.2024
vishnu

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