



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

201

CRR(F)-323-2024

Date of decision: 18.11.2024

Sagar Handa

....Petitioner

V/s

Surbhi Khanna

....Respondent

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Ms. Ravisha Mahajan, Advocate for the petitioner.
Mr. Inder Preet Singh, Advocate for the respondent
(through V.C.)

SUMEET GOEL, J. (Oral)

1. Present revision petition has been preferred against the order dated 01.09.2023 passed by the Additional Principal Judge, Family Court, Amritsar (hereinafter to be referred as the ‘concerned Family Court’) praying for setting-aside of the said order. Vide the impugned order; the respondent-wife has been awarded interim maintenance at the rate of Rs.10,000/- per month to be paid by the petitioner-husband (herein) from the date of the institution of the application alongwith litigation expenses to the tune of Rs.5500/-. The respondent (herein) had filed a petition, under Section 125 of Cr.P.C., 1973 before the Family Court, stating that she is the wife of the petitioner (herein) and is unable to maintain herself and hence the interim maintenance ought to be awarded to her.
2. Learned counsel appearing for the petitioner has iterated that the respondent-wife has filed an application before the Family Court, seeking interim maintenance, by projecting false narrative which is contrary to the record. It has been further iterated that the respondent has very



conveniently concealed her true financial status which constitutes gross abuse of the process of the Court. Learned counsel asserts that the findings of the learned Family Court are based on misrepresentation of facts and the same deserve to be set-aside. According to learned counsel, the petitioner is working as a Commission Agent and his monthly earning is Rs.15,000/-. Furthermore, it has been submitted that the minor daughter, who is school going, is in the care and custody of the petitioner, who is taking care of all her financial needs including tuition expense and transportation expenses. It has been further submitted that the Family Court has committed a grave error while passing the impugned order by not considering the true facts and false deposition of the respondent-wife and hence the application under Section 125 of the Cr.P.C., 1973 is not maintainable *per se*. It has been further emphasized that the respondent has deliberately attempted to conceal her financial status as she is imparting tuitions and earning handsomely which fact is decipherable from the fact that she is an income tax assessee. The concealment of this fact amounts to gross abuse of the process of law and Courts and tantamounts to a sole ground for the dismissal of her maintenance petition. Learned counsel has further argued that the Family Court ought to have considered this aspect before fastening the petitioner with the liability to pay interim maintenance to the respondent. Thus, it has been prayed that the impugned order is patently illegal; suffers from material infirmities and the quantum of interim maintenance is liable to be set-aside.

3. *Per contra*, learned counsel for the respondent has argued that the learned Family Court has rightly allowed the application seeking interim maintenance as the respondent-wife does not have any source of income to



order to evade his liability to maintain the respondent-wife, has uploaded the false income tax returns on behalf of the respondent-wife, in order to impute some income to her; that the password of the respondent-wife was with the petitioner-husband and he has misused the same for the aforesaid purpose(s). Furthermore, the Family Court has determined the quantum of maintenance based on the calculation of the income of the petitioner as also taken due consideration of the relevant facts and circumstances of the case. Thus, it has been prayed that the present petition be dismissed.

4. I have heard learned counsel for the rival parties and have perused the available record.

5. It would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court titled as ***Rajnish vs. Neha & Anr.: 2021(2) SCC 324***; relevant whereof reads as under:-

“II Payment of interim Maintenance

1. The proviso to Section 24 of the HMA (inserted vide Act 49 of 2001 w.e.f. 24.09.2001), and the third proviso to Section 125 Cr.P.C., 1973 (inserted vide Act 50 of 2001 w.e.f. 24.09.2001) provide that the proceedings for interim maintenance, shall as far as possible, be disposed of within 60 days' from the date of service of notice on the contesting spouse. Despite the statutory provisions granting a time-bound period for disposal of proceedings for interim maintenance, we find that application remain pending for several years in most of the cases. The delays are caused by various factors, such as tremendous docket pressure on the Family Courts, repetitive adjournments sought by parties, enormous time taken for completion of pleadings at the interim stage itself, etc. Pendency of applications for maintenance at the interim stage for several years defeats the very object of the legislation.

2. At present, the issue of interim maintenance is decided on the basis of pleadings, where some amount of guess-work or rough estimation takes place, so as to make a prima facie assessment of the amount to be awarded. It is often seen that both parties submit scanty material, do not disclose the correct details, and suppress vital information, which makes it difficult for the Family Courts to make an objective assessment for grant of interim maintenance. While there is a tendency on the part of the wife to exaggerate



her needs, there is a corresponding tendency by the husband to conceal his actual income.

74.It has therefore, become necessary to lay down a procedure to streamline, the proceedings, since a dependant wife, who has no other source of income, has to take recourse to borrowings from her parents/relatives during the interregnum to sustain herself and the minor children, till she begins receiving interim maintenance.

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(j) The concerned Family Court /District Court/Magistrate’s Court must make an endeavour to decide the I.A. for Interim Maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.

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132. The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the concerned Family Court/District Court/Magistrate’s Court, as the case may be, throughout the country;

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xxx xxx xxx xxx xxx”

6. Vide the impugned order passed by the Family Court, the aspect of interim maintenance has been decided. It goes without saying that a decision upon the aspect (especially quantum) of interim maintenance, being result of some element of estimation, has to be construed accordingly as the entitlement of the applicant (making a plea for grant of interim maintenance) cannot be based upon exact arithmetical calculations at such stage. The order granting interim maintenance is, indubitably, subject to final adjudication and it is a provisional step subject to final determination to be made on the conclusion of proceedings. In other words, the interim maintenance is only tentative & is subject to fixation of final maintenance.



7. Indubitably, the relationship between the parties is not in dispute. The facts of the instant case reflect that vide the impugned order; the respondent, who is the wife of the petitioner, has been granted interim maintenance at the rate of Rs.10,000/- per month from the date of institution of the application. While going through the impugned order, it transpires that both the parties have submitted their affidavits in terms of the judgment passed by Hon'ble Supreme Court in the case of **Rajnesh** case (supra). The respondent-wife has consistently maintained throughout the proceedings that she has no source of income. Conversely, the petitioner-husband denied the income claimed by the respondent-wife (herein) and asserted in his affidavit of disclosure of assets and liabilities that he is a cloth commission agent and revealed his monthly income as Rs.15,000/-. It was further contended before the Family Court by the petitioner-husband that he is not an income tax assessee. Considering the income of the petitioner-husband, requirements of the minor child, who is living in the custody of the petitioner, the Family Court had directed the petitioner-husband (herein) to pay Rs.10,000/- per month as interim maintenance effective from the date of filing of the application.

8. In the considered opinion of this Court coupled with the facts and circumstances of the case, the monthly interim maintenance amount of Rs.10,000/-, which has been directed to be paid by the petitioner (herein) to the respondent-wife, vide the impugned order appears to be on the higher side. It is worthwhile to note herein that the objective of granting interim maintenance is to ensure that the dependent wife is not reduced to destitution or vagrancy during the pendency of her maintenance application, and not as



reasonable and realistic, and avoid either of the two extremes. It is pertinent to mention herein that the although the primary responsibility of the husband is to maintain the wife especially in cases where the wife has no source of income but at the same time it needs to be noticed herein that the minor child is living in the care and custody of the petitioner-husband and all of his expenses are being borne by the petitioner-husband. The financial obligations of the petitioner towards the minor child for his upbringing alongside the interim maintenance which was ordered by the Family Court for the respondent-wife, create a considerable burden on the petitioner-husband (herein). While adjudicating the quantum of maintenance payable to the wife, it is imperative for the Court to consider the fact that the minor child is residing in care and custody of the father. Failure to take into consideration this crucial aspect; would result in undue and inequitable burden upon the father. The father, as the parent having custody of the minor child, is already under a legal obligation to meet the needs of the children, which include but are not limited to their education, health care, sustenance and other ancillary expenses. These obligations constitute a substantial financial responsibility that must be factored into while ratiocinating upon the quantum of maintenance. Therefore, a balanced approach must be struck between ensuring the reasonable needs of the wife and recognizing the financial strain on the petitioner-husband (herein), who bears the additional responsibility of taking care and looking after to the needs of his minor child.

8.1. Another pertinent aspect of the matter merits consideration at this juncture. A bare perusal of the ITR of the respondent-wife corresponding to the assessment year 2021-22, which has been annexed as



Annexure P-7 with the instant petition, reveals that the total income of the respondent-wife for the above said year is Rs.2,54,160/-. This fact assumes significance in light of the fact that the main petition for grant of maintenance was filed on 01.08.2022 and the learned Family Court has failed to take into consideration this aspect appropriately, particularly when the ITR in question was the latest at the time of the institution of the main petition. While determining the quantum of maintenance, the Court is required to consider the financial capacity and income of both the parties. In this regard, the ITRs filed by the wife, reflecting her independent income should be given due weightage. The principle of maintenance seeks to ensure that the wife is able to maintain a standard of living commensurate with the marital lifestyle. However, if the income of the wife demonstrates her financial sufficiency, the quantum of maintenance may be adjusted accordingly. The contention of learned counsel for the respondent-wife that the requisite password etc. for uploading of the ITR of the wife was with the petitioner-husband and the petitioner-husband has surreptitiously got uploaded the wrong ITR of the respondent-wife is mis-conceived, and ought not to be looked into at this stage. No such ground was raised on behalf of the respondent-wife in the pleadings filed before the Family Court. Although, rigid constraints of formal pleadings need not be adhered to in criminal proceedings, however, the rules of pleadings cannot be entirely disregarded especially in matters arising out of a petition under Section 125 Cr.P.C., 1973, which are quasi-criminal in nature. Proceedings under Section 125 of Cr.P.C., 1973 are aimed to provide expeditious relief and are summary in nature, but this does not absolve the parties from raising pertinent issues at the appropriate stage. In the absence of any such



contentions having been raised before the Family Court much less the production of any substantive material supporting the said contention, the respondent-wife is estopped from raising it at this stage, especially, in light of the fact that the instant revision petition is filed impugning the grant of interim maintenance, which is a provisional step subject to final determination to be made on conclusion of maintenance proceedings by the concerned Family Court. Therefore, it can be well deduced from the above said discussion that the wife is not totally devoid of a source of income. Though the petition for grant of maintenance was filed at the instance of the wife and the same cannot be declined in toto on account of wife having some income but such income of the wife is indubitably required to be taken into account.

9. Accordingly, the present petition is partly allowed & the impugned order dated 01.09.2023 passed by the Family Court is modified to the extent that the quantum of interim maintenance is reduced from Rs.10,000/- to Rs.5,000 per month from the date of filing of the petition.
10. Any observations made and/or submissions noted hereinabove shall not have any effect on the merits of the case and the Family Court shall proceed further, in accordance with law, without being influenced therefrom.
11. Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

November 18, 2024
Ajay

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

