



IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

218

CRR-F-231-2022(O&M)
Date of order: 02.12.2024

Rakesh Kumar

.....Petitioner(s)

Vs.

Neetu & Others

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Sapna Seth, Advocate
for the petitioner.

Nidhi Gupta, J.

Challenge in the present petition is to the order dated 07.09.2021 passed by the learned Additional Principal Judge, Family Court, Jalandhar, whereby in a proceeding under Section 125 Cr.P.C., the petitioner has been directed to pay interim maintenance of Rs.16,000/- per month to the respondents (Rs.8,000/- per month to respondent No.1/wife and Rs.4,000/- each per month to respondents No.2 and 3/minor children) from the date of application along with litigation expenses of Rs.5,000/-.

2. Learned counsel for the petitioner inter alia submits that the impugned order is liable to be set aside as the respondent No.1 has misled the Courts below inasmuch as respondent No.1 had stated herself to be a housewife whereas in actual fact, she is a working lady and earns good amount. It is contended that respondent No.1 is working in SK Manufacturing Company in Jalandhar and earning good salary. The respondent No.1 has also opened a confectionary shop at her home, which is run by her elder son who has attained majority.This fact is also evident

from the Income Tax Return of respondent No.1 (Annexure P8) as per which the respondent No.1 has monthly income of Rs.25,000/- per month. From the Income Tax Returns of the respondent No.1 (Annexure P8), it is evident that she is earning well and is also an income tax payee. Respondent No.1 also owns a house at House No.90, Ashok Vihar, Backside Verka Milk Plant, Jalandhar. However, these facts are not considered by the learned Family Court while passing the impugned order. It is accordingly submitted that the respondent No.1 was not entitled to maintenance. The impugned order has been passed on an incorrect premise. The petitioner has the additional responsibility of his aged and ailing mother and her substantial medical expenses. The petitioner is earning only Rs.15,000/- per month from his commission-based work. It is accordingly prayed that the impugned order be set aside.

3. No other argument is made on behalf of the petitioner.

4. I have heard learned counsel for the petitioner and perused the case file in great detail.

5. Perusal of record of the case shows that the petitioner was married to respondent No.1 on 25.05.2001. Two sons/respondents No.2 and 3 were born out of their wedlock in the year 2002 and on 12.05.2015 respectively. The parties are living separately since 26.01.2015. Present petition under Section 125 Cr.P.C. (Annexure P2) was filed by the respondents on 12.04.2019.

6. At the very outset, it may be pointed out that vide order dated 02.12.2022 passed by a Co-ordinate Bench of this Court, it was

directed that “...award of maintenance in favour of wife-respondent No.1 and son-respondent No.2 (who has attained majority) shall remain stayed till the next date”. Vide the impugned order, the maintenance was granted to respondent No.2 only till the date he attained majority.

7. The respondents had filed the petition under Section 125 Cr.P.C. with the assertions that the petitioner is doing business of furniture in the name and style of Shiv Furniture House, Railway Phatak, Kartarpur and he earns Rs.1 lakh per month and also has monthly rental income of Rs.25,000/-. The said contentions were denied by the petitioner in his reply filed by him before the learned Family Court.

8. The respondent No.1 had also filed her Affidavit of Income, Assets and Liabilities (Annexure P3) in which she has shown her educational qualification is 12th pass; her monthly income to be ‘Nil’; and her monthly expenditure to be Rs.30,000/-. Both the children are in the care and custody of respondent No.1. Admittedly, both the children were school going at the time of filing the petition under section 125 Cr.P.C. Respondent No.2 has only recently attained majority in 2020. It has further been reiterated in the said affidavit that the petitioner is earning Rs.1,25,000/- per month i.e. Rs.1 lakh from his furniture business and Rs.25,000/- per month by way rent. The petitioner is also shown to be owner of two shops situated at Tahli Sahib Road, Kartarpur.

9. On the other hand, a perusal of the Affidavit of Income, Assets and Liabilities filed by the petitioner (Annexure A2) before the learned Family Court shows that the petitioner has shown his monthly

income to be Rs.15,000/-; and his monthly expenditure is shown to be Rs.15,000/- as well. In the said affidavit the petitioner has shown himself to be self-employed person who is involved in the sale/purchase of old furniture on commission basis. He has shown his total annual turnover to be Rs.1,80,000/- per annum. Therefore, his monthly income to be about Rs.15,000/-. It has further been contended by learned counsel for the petitioner that the respondent No.1 is owner of residential house in which she is residing.

10. It is by now a settled trend that in matters of maintenance such as the present one, each spouse tries to depict their own income on the lower side, and attempts to show an exaggerated income of the other spouse. The truth usually lies somewhere in between. In any event, these are all matters of evidence. The truth or otherwise of the allegations and counter-allegations made by both the parties can only be determined upon leading of evidence. As such, it is neither desirable nor feasible for this Court to interfere at this stage, let alone return a finding in respect of the contrary assertions made by either of the parties.

11. In any event, the argument of the petitioner that he is earning only ₹15,000/- per month, and as such, is unable to pay the impugned maintenance, is liable to be rejected in view of judgment of the Hon'ble Supreme Court in "**Shamima Farooqui v. Shahid Khan**" (SC): Law Finder Doc Id # 661024, wherein it has been categorically held as follows: –

"B. Criminal Procedure Code, 1973 Section 125 Grant of maintenance to wife - Plea of husband that he was not doing job

and had no means to pay cannot be accepted - These are only bald excuses - Held :-

(i) If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife.

(ii) It is the obligation of the husband to maintain his wife - He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning."

12. Admittedly, the petitioner does not suffer from any physical infirmity and is healthy and able bodied. As such, he cannot absolve himself of his moral and legal responsibility towards the respondents.

13. Even the argument of the petitioner that the respondents are not entitled to maintenance as respondent no.1 is earning herself deserves to be rejected in view of judgment of the Hon'ble Supreme Court in "**Chaturbhuji Vs. Sitabhai**" Law Finder Doc ID # **135040** wherein it has been held that merely because the wife is earning something does not imply that she is not entitled to maintenance; and had granted maintenance of Rs.3,000/- per month to respondent No.1/wife. In this regard, reliance may also be placed upon judgment of this Court in "**Divesh Sapra Vs. Latika Sapra & Another**" CRR-F-1834-2023 and CRR-F-587-2024 decided on 15.10.2024, wherein it has been held by a Coordinate Bench of this Court that a professionally qualified wife cannot automatically be denied maintenance; and the entire facts and circumstances of each case have to be taken into consideration at the time of granting and

determining quantum of maintenance. In the present case, the relevant factor is that the minor child/ children have admittedly been in the care and custody of the respondent no.1. As such, she is responsible not just for their emotional, mental and physical welfare, but also has to provide for the day-to-day needs as well as for the school fees, transportation fees, extra-curricular activities, sports training, for the overall and healthy development of the child/children. The entire burden/responsibility cannot be shouldered single-handedly by the respondent no.1. The petitioner, being the father is liable to contribute, at least financially in the upbringing of his children.

14. It is also necessary to appreciate that the grant of interim maintenance is a temporary measure of social justice to help the abandoned wife and children to tide over the difficult period. It is oft-repeated and no longer res integra that Section 125 Cr.P.C. is a measure of social justice to protect abandoned wife, children and parents from vagrancy and destitution. In **“Kirtikant D. Vadodaria v. State of Gujarat & Another” (1996) 4 SCC 479**, the Hon’ble Supreme Court has 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...”

15. Again, 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, held 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...”

16. Thus, the purpose of Section 125 Cr.P.C. is to protect abandoned wives who are unable to maintain themselves from vagrancy and destitution, to grant social justice to a destitute woman, child, or infirm parents. Moreover, in view of the admitted relationship between the parties, the petitioner cannot escape his responsibility to maintain the respondents.

17. Accordingly, I find no ground is made out that calls for interference in the impugned order. As such, the present petition is **dismissed**.

18. However, it is made clear that nothing stated hereinabove shall be construed as an expression of opinion on the merits of the matter.

19. Pending application(s) if any shall also stand(s) disposed of.

02.12.2024
Sunena

(Nidhi Gupta)
Judge

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