



IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR(F)-440-2023 (O&M)
Date of order: 21.10.2024

Rahul Malik

.....Petitioner(s)

Vs.

Neeraj Kumari and another

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sanyam Khetarpal, Advocate
for the petitioner.

Mr. Ram Kumar Saini, Advocate and
Mr. Ankit Saini, Advocate for the respondents.

Nidhi Gupta, J.

Challenge in the present petition filed by the husband is to the order dated 15.02.2023 passed by the learned Principal Judge, Family Court, Faridabad, whereby in a proceeding under Section 125 Cr.P.C., the petitioner has been directed to pay final maintenance of Rs.20,000/- per month to the respondent No.2/minor daughter from the date of filing of the petition till the date she attains majority.

Learned counsel for the petitioner *inter alia* submits that the said order of maintenance has been passed without appreciating the fact that the petitioner is suffering from Tuberculosis. As a result of the ailment suffered by the petitioner, his services have been terminated. As such the petitioner is not earning anything. In support of his contention, learned counsel refers to the medical record of the petitioner (Annexure P-5).



It is further contended that the respondent No.2 is aged 7 years and would not require Rs.40,000/-p.m. In passing the impugned order, learned Family Court has also failed to consider that the petitioner has lost many career opportunities and is unemployed as respondent No.1/wife has made the life of the petitioner miserable by filing many criminal complaints and other cases against the petitioner. The time and resources of the petitioner are spent only in pursuing the said cases. As such, the petitioner is unable to pay the impugned maintenance.

Moreover, the learned trial Court has also failed to take into account the fact that respondent No.1/mother of respondent No.2 is working as an Associate Professor in Manav Rachna University on a salary of Rs.70,528/- p.m. She belongs to a wealthy family. In fact, she had left the matrimonial home of her own sweet will and accord, and as such, she is not entitled to maintenance. It is accordingly prayed that the present petition be allowed, and the impugned order be set aside.

Learned counsel for the respondents opposes prayer made on behalf of the petitioner and submits that no ground is made out for interference in the impugned order as the same is passed after taking into account the relevant facts and is based on cogent reasoning. It is further submitted that it has been duly established before the Court below that the petitioner is a man of means. There is nothing on record to suggest that the petitioner is suffering from Tuberculosis as the medical record of the petitioner (Annexure P-5) has not been produced before the Court below and, therefore, the petitioner cannot derive any benefit from the same. The



petitioner is in arrears of maintenance of several lacs. It is accordingly prayed that the present petition be dismissed.

No other argument is made on behalf of the parties.

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

Perusal of record of the case shows that the petitioner was married to respondent No.1 on 07.03.2014. Respondent No.2 was born from their wedlock on 19.05.2016. Due to matrimonial discord, the parties started living separately since 06.06.2016. The present petition under Section 125 Cr.P.C. was filed by the respondents on 17.05.2017. At present, the Respondents are residing at the parental home of respondent No.1.

It is the contention of the petitioner that the respondent No.1 had herself left the matrimonial home and as such she is not entitled to maintenance. First and foremost, vide the impugned order maintenance has been granted only to the minor daughter/respondent No.2, and not to respondent no.1. As such, the said argument of the petitioner has no bearing on the matter. Moreover, it has been recorded in the impugned order that the respondent no.1 had left the matrimonial home when the daughter was only 17 days old. It has been correctly reasoned by the learned Court below that *"no sane or prudent woman, having a daughter of 17 days in her lap, would leave her marital home without compelling reasons."* I am in concurrence with the said reasoning of the Family Court.

It has further been argued by the petitioner that the respondent No.1 has filed several cases against the petitioner and his family members as a result of which his entire time and resources are spent in



litigation. However, it is admitted case of the petitioner himself that on 09.10.2016 when the respondent and her family members allegedly assaulted and hurt the petitioner, he had registered an FIR No. 731 dated 05.10.2016 under Sections 323, 506, 34 IPC in respect of the said incident. A counterblast FIR No. 733 dated 12.10.2016 under Sections 323, 506, 148, 149 IPC was then registered by the respondent-party against the petitioner. The petitioner has registered another FIR No. 305 dated 29.04.2017 at Police Station Central Faridabad in which a cancellation report was filed in respect of which protest petition is stated to be pending before the learned ACJM, Faridabad. As such, this argument of the petitioner is also liable to be rejected.

As regards the ostensible medical record produced by the petitioner (Annexure P-5) as per which he is alleged to be suffering from Tuberculosis, needless to say, the same has not been proven in accordance with law. The said record is dated 10.12.2022, whereas the impugned order is dated 15.2.2023. However, there is nothing to suggest that the said medical record was produced by the petitioner before the learned Family Court. Moreover, tuberculosis is not a fatal or debilitating disease and is curable. Annexure P-5 pertains to almost 2 years ago. There is nothing on record to remotely suggest that the petitioner has been incapacitated to such an extent that he is presently unable to work. Even otherwise, in view of the admitted relationship between the parties, the petitioner cannot be absolved of his moral and legal responsibility of maintaining the respondent. In this regard judgment of the Hon'ble Supreme Court in



“Shamima Farooqui v. Shahid Khan” (SC): Law Finder Doc Id # 661024, is

relevant wherein it is 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.”

The next contention of the petitioner is that respondent No.1 is working as Associate Professor in Manav Rachna University and earning Rs.70,528/- p.m., and for this reason as well, the impugned order deserves to be set aside. However, it is to be noted that it was in view of this fact that no maintenance was granted to the respondent no.1; and vide the impugned order, the respondent No.1 has also been directed to pay Rs.20,000/- p.m. to respondent No.2 from the date of filing of petition till she attains majority. Furthermore, admittedly, respondent No.2 is in the sole care and custody of respondent No.1/wife. Nothing has been brought to the attention of this Court that any custody case has been filed by the petitioner. The only apparent assistance given by the petitioner is financial in nature. It is reprehensible that the petitioner has objection to this as well. No doubt, it is the moral and legal responsibility of both the parents to maintain and bring up their children. In the present case, it seems the



entire burden has been shifted upon respondent no.1 only. As such, I find no merit in this argument raised on behalf of the petitioner.

It has further come on record that as per the Income Tax Returns placed on record by the petitioner for the year 2016-17, the petitioner was earning Rs.80,000 to Rs.90,000/- p.m. It has been recorded in para 16 of the impugned order that despite grant of sufficient opportunities, the petitioner had failed to produce his latest Income Tax Returns or his Bank Account statements. Clearly, therefore, the petitioner failed to disclose his correct income before the learned Court below. As per the respondents, the petitioner is working as Manager-Projects with Cognizant, Gurugram and earning Rs. 18 lacs per annum. There is nothing on record to disprove the said assertion of the respondents as, after filing his affidavit (Ex.RW1/A), the petitioner intentionally did not appear before the learned Family Court to complete his evidence. Only the examination-in-chief of the petitioner was recorded whereafter the petitioner failed to appear for the cross-examination. As such even the affidavit tendered by the petitioner was not proven as per law.

The derelict attitude of the petitioner is also evident from the fact that in the present proceedings under Section 125 Cr.P.C. vide order dated 28.11.2018 (Annexure P-3), the petitioner had been directed to pay interim maintenance of Rs.15,000/- p.m. to respondent No.2 from the date of filing of petition. The said order was challenged by the petitioner before this Court by way of CRR(F)-1417-2018 wherein vide order dated 20.03.2019 (Annexure P-4), this Court had stayed 50% of the awarded maintenance. However, even the said remaining amount of 50% has not



been paid by the petitioner. This is evident from the fact that, in the present case, vide order dated 23.03.2023 passed by a Coordinate Bench, the petitioner was directed to file his affidavit with regard to arrears of maintenance detailing the amount already paid. In compliance of which the petitioner has filed affidavit dated 22.05.2023 (Annexure P-6) as per which by his own admission the petitioner was in arrears of Rs.5.5 lacs on said date. Thereafter, vide order dated 24.05.2023 the Coordinate Bench had issued conditional Notice of Motion in the present case, with the following directions: -

“Learned counsel for the petitioner to demonstrate his bona fide submits that he will deposit a sum of Rs.2,50,000/- within one month from today. On assurance of the counsel for the petitioner that the said directions will be complied with, issue notice of motion.

Admittedly, the said order has not been complied with by the petitioner till date.

Even otherwise, 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...”

Accordingly, in view of the factual and legal position, as noticed above, I find no ground is made out that calls for interference in the impugned order. As such, the present petition is **dismissed**.

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

21.10.2024
Divyanshi

(Nidhi Gupta)
Judge

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