



CRR(F)-423-2024
CRR(F)-1217-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision: 29.11.2024

1. CRR(F)-423-2024

Munender Kumar

...Petitioner

V/s

Ruby and another

...Respondents

2. CRR(F)-1217-2024

Ruby and another

...Petitioners

V/s

Munender Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. M.S. Kundu, Advocate for the petitioner
in CRR(F)-423-2024 and for the respondent
in CRR(F)-1217-2024.

Mr. Lokesh Sharma, Advocate for the respondents
in CRR(F)-423-2024 and for the petitioners
in CRR(F)-1217-2024.

SUMEET GOEL, J. (Oral)

Vide this common order, the afore-said two revision petitions arising out of the common impugned order are being disposed off. For the sake of brevity, recitals/facts are being taken from CRR(F)-423-2024.

1. The instant revision petition has been preferred against the order dated 20.12.2023 passed by the Principal Judge, Family Court, Rohtak (hereinafter to be referred as 'impugned order') praying for setting-aside/modification of the quantum of interim maintenance awarded by the said order. Vide the impugned order; the respondents (wife and minor son)

have been awarded interim maintenance at the rate of Rs.28,000/- per month



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(i.e. Rs.20,000/- per month to respondent No.1-wife and Rs.8,000/- per month to respondent No.2 (minor son)) from the date of application i.e. 17.12.2019 till December, 2021 and from March, 2023 till final decision alongwith litigation expenses of Rs.11,000/-. The respondents (wife and minor son) had filed a petition, under Section 125 of Cr.P.C., 1973 before the Family Court, stating that they are the wife and minor son of the petitioner (husband) and are unable to maintain themselves and hence the interim maintenance ought to be awarded to them.

2. Learned counsel appearing for the petitioner-husband has iterated that the respondent-wife has deserted the petitioner without any valid or reasonable cause which disentitles her from claiming any form of maintenance from the petitioner. It has been further submitted that the respondent-wife is a BDS doctor who was previously employed at a school from 29.07.2022 to 30.01.2023, earning a monthly salary of Rs.31,250/-and these facts were not disclosed in her application for maintenance. According to learned counsel, the respondent-wife is currently earning over Rs.70,000/- per month and the Family Court has failed to consider this aspect before assessing the quantum of interim maintenance. It has been further iterated that the Family Court has overlooked the fact that the petitioner has a widowed mother and her expenses are being borne by him. Furthermore, the petitioner is paying a substantial amount of Rs.22,000/- per month as instalments for a home loan, along with other necessary expenses. Moreover, the Family Court has failed to consider the fact that the income of the petitioner includes allowances due to his posting in Assam, where army personnel receive additional salary as per government policies. Learned



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counsel has argued that despite the fact that the respondent-wife earns a substantial monthly income sufficient for her maintenance and the minor child, the interim maintenance order is unjust and deserves to be set-aside. Learned counsel has further argued that, in any case, the Family Court has adopted a wholly wrong approach while granting the quantum of interim maintenance and hence it has been prayed that the quantum of interim maintenance awarded vide impugned order be set-aside.

3. *Per contra*, learned counsel for the respondents has iterated that the learned Family Court though has determined the quantum of maintenance based on the facts and circumstances of the case but the same deserves to be enhanced by taking into consideration the earning capacity as well financial status of the petitioner, who is earning handsomely. Learned counsel has further iterated that the respondent-wife alongwith her minor child, is leading a difficult and dependent life, entirely reliant on the support of her parents. It has been further submitted that the respondent-wife has no independent source of income and the respondents require a minimum monthly maintenance of Rs.60,000/-. Furthermore, the respondent-wife is responsible for maintaining her minor son, which includes his monthly school fee alongwith bus fees and other miscellaneous expenses which further underscores the financial strain faced by the respondent-wife. Furthermore, the cost of education and associated expenses continues to rise with each passing day, placing an additional financial strain on the respondents. Given these circumstances, learned counsel prays that the quantum of interim maintenance awarded vide impugned order is inadequate and the same deserves to be modified and enhanced accordingly.



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4. I have heard learned counsel for the rival parties and have perused the record.
5. It would be apposite to refer herein to a judgment passed by the Hon’ble Supreme Court titled as **Rajnesh vs. Neha & Anr.: 2021(2) SCC 324**; relevant whereof reads as under:-

“II Payment of interim Maintenance

- (i) *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.*
- (ii) *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 s 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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xxx xxx xxx xxx xxx

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;

xxx xxx xxx xxx xxx
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, indubitably, is subject to final adjudication and it is a provisional step subject to final determination to be made at the conclusion of proceedings. In other words, the interim maintenance is only tentative & is subject to fixation of final maintenance.

7. The factum of marriage as also the birth of respondent No.2 (minor son), born out of the wedlock, is not in dispute The facts of the instant case reflect that vide the impugned order; the respondents, who are the wife and minor son of the petitioner-husband, have been granted interim maintenance at the rate of Rs.28,000/- per month (i.e. Rs.20,000/- per month



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(minor son)) from the date of application i.e. 17.12.2019 till December, 2021 and from March, 2023 till final decision. 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 **Rajnish** case (supra). In her affidavit of assets and liabilities dated 01.05.2023, the respondent-wife stated that she had separated from the petitioner-husband in the year 2018 and again in February 2023. She, however, acknowledged that she had lived with the petitioner-husband from 27.12.2021 to 12.02.2023, during which period, she worked as a contractual teacher in Assam, near the posting of the petitioner-husband. However, she had alleged that the petitioner-husband (herein) did not contribute to her expenses during this time. Furthermore, the respondent-wife had constantly maintained throughout the proceedings before the Family Court that she had no source of income and, after moving to Rohtak in February 2023, she cannot reasonably be expected to continue her employment in Assam. Conversely, the petitioner-husband asserted that he is employed with the Central Reserve Police Force (C.R.P.F.). As per the salary certificates submitted on record, the Family Court observed that the net salary of the petitioner-husband (herein) for the months of March 2023, April 2023, May 2023 and June 2023 was Rs.86,505/-, Rs. 81,007/-, Rs.75,773/- and Rs.79,705/- respectively. The Family Court further observed that the plea of the petitioner-husband regarding his liability to repay a house loan lacks *prima facie* credibility, as no substantial evidence had been provided to demonstrate the impact of such a liability on his ability to maintain the respondents (herein). Furthermore, the affidavit of declaration of assets and



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liabilities filed by the petitioner-husband (herein) reveals that he owns ancestral property measuring 3.5 bighas of land, which is an additional source of income. Based on the evidence on record, the Family Court held that the total monthly income of the petitioner-husband (herein) can reasonably be inferred to be around Rs.80,000/-. Considering the aforesaid facts and circumstances of the case, the Family Court had directed the petitioner-husband (herein) to pay Rs.28,000/- per month as interim maintenance to the respondent-wife (herein) as indicated hereinabove.

8. It is apt to mention herein that the husband has both a moral and legal obligation to provide financial support to his wife, regardless of her professional qualifications, unless there are substantial legal grounds to deny her maintenance. The educational qualifications of a wife cannot be a valid ground to deny her maintenance under Section 125 of the Code of Criminal Procedure, 1973. The essential criterion for awarding maintenance is not the academic qualifications of the wife but her actual ability to sustain herself and meet her reasonable expenses. Even if a wife is educationally qualified, it does not necessarily imply that she is financially independent or capable of earning her livelihood. Factors such as availability of employment opportunities, societal conditions, care giving responsibilities, or health issues may impede her ability to secure gainful employment. A profitable reference in this regard may be made to the judgment of this Court in case titled as ***Divesh Sapra vs. Latika Sapra and another : Neutral Citation No.2024: PHHC134617***, relevant whereof reads as under:-

“10. The next argument advanced on behalf of the husband to contend that the wife being professionally qualified cannot be expected to sit idle and as such she is not entitled to seek maintenance is again liable to be



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rejected as being misconceived. The wife merely by virtue of being educationally qualified cannot be held disentitled to seek maintenance, until and unless it is proved that she being professionally qualified, having taken up a profession, has given up on such profession, just for the sake of seeking maintenance. In the present case, it is not the case of the husband that the wife was working and earning after the marriage prior to her filing the present petition for grant of maintenance.”

Therefore, the bald assertions made by the husband regarding the educational qualifications of the respondent-wife, without adducing substantive evidence to establish that she is gainfully employed, hold no legal significance. The burden of proof lies upon the husband to demonstrate that the wife has independent income or employment, particularly when she has explicitly averred in her affidavit that she is neither employed nor earning any income.

8.1. Furthermore, it is trite law that the duty to maintain one's wife and the minor child is a personal and statutory obligation under Section 125 of the Code of Criminal Procedure, irrespective of other financial liabilities, unless demonstrated to be insurmountable. It has been consistently held that the financial responsibility of a husband towards his wife and child is paramount, and wife and a child cannot be left destitute merely because the husband has other financial commitments. Moreover, the contentions raised by the learned counsel for the parties in the present two petition(s) that the respondent-wife possessed sufficient means/income to maintain herself and the minor son or the Family Court has grossly erred in computing the income as also other financial liabilities of the petitioner-husband, are in fact, a matter of trial and the same should not be ratiocinated upon by this Court at this stage. The same can be ascertained only after adducing



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evidence by the parties. Moreover, the impugned order is only an interim measure in nature and not a final decision of the maintenance petition. The amount of maintenance awarded is always subject to the adjustment which will depend on the final outcome of the maintenance petition filed by the respondent/wife. In the instant case, the amount of interim maintenance, which has been directed to be paid by the petitioner (herein), vide the impugned order cannot be said to be on the higher/lower side and is rather just and appropriate in the facts/circumstances of the present case.

- 9. In view of the above, the interim maintenance granted by the Family Court does not call for any interference. Accordingly, both the petition are hereby dismissed.
- 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 29, 2024
Ajay

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