



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-391-2024

Date of decision: 19.11.2024

Yashpal Singh

....Petitioner

V/s

Anita Kumari

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

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

Mr. G.S. Bajwa, Advocate for the respondent.

SUMEET GOEL, J.

1. Present revision petition has been preferred against the order dated 23.08.2023 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 of Rs.3300/-. The respondent (herein) had filed a petition, under Section 125 of Cr.P.C., 1973 before the Family Court, stating that she is the legally wedded 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 Family Court did not consider that the respondent-wife has not only left

the matrimonial home without any sufficient cause but also abandoned her



two minor daughters, who were then aged about 4 years and 3 years respectively. Furthermore, the younger daughter is suffering from a permanent hearing impairment, which has also negatively affected her ability to speak. It has been further iterated by the learned counsel that while assessing the quantum of interim maintenance, the Family Court did not take into consideration that, in addition to expenditure on school fees, books and other expenses for both children; the petitioner is also bearing the costs of the treatment of the younger daughter, which involves visits to various speech and hearing rehabilitation clinics and the purchase of costly assistive devices. Furthermore, it is submitted that the respondent is a qualified lady, holding a B.A. degree as also a Postgraduate Diploma in Computer Application (PGDCA). According to learned counsel, the Family Court has not considered the aspect that the respondent-wife is running a tuition center and earning approximately Rs.15,000/- per month. It has been further submitted by the learned counsel that the father of the petitioner is running a small workshop manufacturing iron gates and grills, where the petitioner is employed. According to learned counsel, the father of the petitioner is a heart patient and has undergone bypass surgery whereas the mother of the petitioner also suffers from various health issues requiring ongoing medical expenses. According to learned counsel, the income from the workshop is barely sufficient to support the petitioner, his two minor daughters and his elderly parents. In contrast, the respondent, being well-educated, has adequate resources to support herself. It has been further iterated that the respondent-wife has left the matrimonial home on unreasonable grounds and



hence the application under Section 125 of the Cr.P.C., 1973 is not maintainable *per se*. However, the learned Family Court has disregarded the financial responsibilities of the petitioner-husband and granted the interim maintenance to the respondent-wife. Thus, it has been prayed that the impugned order is patently illegal and suffers from material infirmities and hence 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 neither has any source of income to maintain herself nor any movable or immovable property in her name. 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 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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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 Family Court has thoroughly reviewed the affidavits of the rival parties. The respondent-wife has consistently maintained throughout the proceedings that she has neither any source of income nor possesses any moveable or immovable property. She had further asserted before the Family Court that the petitioner-husband (herein) has substantial means as he is running workshop under the name and style of Yashpal Workshop and is alleged to be taking government contracts, with his monthly income being not less than Rs.2.00 lacs. Conversely, the petitioner-husband had denied the income claimed by the respondent-wife (herein) and asserted that he earns



Rs.15,000/- per month by working as employee in the workshop of his father. It was further contended before the Family Court that he bears the full responsibility of his two minor daughters, who are living with him and covers all their expenses. Regarding the determination of the interim maintenance to be awarded by the petitioner (herein) to the respondent-wife (herein), the Family Court noted that there is no documentary evidence on record establishing the profession or income of the respondent-wife (herein). However, the Income Tax Returns (ITR) filed by the petitioner-husband (herein) for the years 2020-21 and 2021-22 were taken into consideration which indicate the annual income of the petitioner-husband (herein) to be Rs.3,76,250/- and Rs.3,81,500/- respectively. Considering the arguments raised by both the parties, alongwith the overall facts and circumstances of the case including the requirements of minor daughters of the parties, who are living in the care and custody of the petitioner-husband (herein), the Family Court has partly allowed the application and granted Rs.10,000/- per month as interim maintenance to the respondent-wife (herein).

8. Given 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 a punishment to the husband. The maintenance amount awarded must be 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 children are living in the care and custody of the petitioner-husband and all their expenses are being borne by him. The financial obligations of the petitioner towards the minor children for their 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) especially when the younger daughter of the petitioner is suffering from a permanent hearing impairment, which has affected her ability to speak. The petitioner-husband (herein) is also covering the expenses for the treatment of her younger daughter, which includes visits to multiple speech and hearing rehabilitation clinics and purchase of expensive assistive devices. While adjudicating the quantum of maintenance payable to the wife, it is imperative for the Court to consider the aforesaid fact as also that the two minor daughters are living in the care and custody of the petitioner-father (herein). Failure to take into consideration this crucial aspect; would result in undue and inequitable burden upon the petitioner-father (herein). The father, as the parent having custody of the children, 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 children.

8.1. The contention raised on behalf of the petitioner-herein that the respondent-wife has left his company and the matrimonial home without any sufficient cause is not for this court to delve into at this stage, particularly as the present revision petition pertains solely to the challenge against the grant of interim maintenance. The determination of such issues lies within the purview of the trial court, which is tasked with adjudicating the question of final maintenance after a thorough examination of evidence presented by both parties. Interim maintenance, being a provisional arrangement, is intended to ensure sustenance during litigation and does not preclude the petitioner from raising substantive contentions during final adjudication.

8.2. Furthermore, the contention advanced on behalf of the petitioner-husband (herein) that maintenance petition filed by the respondent-wife (herein) ought to have been dismissed on the ground that she possessed sufficient educational qualification is not well founded in law. 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 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.



9. Accordingly, the present petition is partly allowed and the impugned order dated 23.08.2023 passed by the Family Court is modified to the extent that the quantum of interim maintenance is reduced from Rs.10,000/- to Rs.6,000 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 19, 2024
Ajay

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