

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Date of decision: 18th April, 2024

1.

CRR(F)-531-2023 (O&M)

Ms. Priyal and another

...Petitioner(s)

Versus

Lt. Col. Ankush Batra

...Respondent(s)
2.

CRR(F)-1236-2022 (O&M)

Lt. Col. Ankush Batra

...Petitioner(s)

Versus

Ms. Priyal and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. G.C. Shahpuri, Advocate for the petitioner
in CRR(F)-531-2023 and for the respondent in
CRR(F)-1236-2022.

Ankush Batra-Respondent in person
in CRR(F)-531-2023 and
petitioner in CRR(F)-1236-2022.

MANISHA BATRA, J (ORAL):-

This common order shall dispose of the aforementioned two petitions which have been preferred against order dated 05.11.2022 passed by the Learned Principal Judge, Family Court, Panchkula in MNT No. 92/2021 titled as ‘Priyal and another vs. Lt. Col. Ankush Batra’, whereby interim maintenance to the tune of Rs. 25,000/- per month and Rs. 40,000/-

per month respectively was directed to be paid by way of interim maintenance.

2. For the sake of continuity and coherence, hereinafter the parties shall be referred to as per their original nomenclature as given in main petition before the Family Court.

3. Brief facts relevant for the purpose of disposal of these petitions are that the aforementioned petition under Section 125 of Cr.P.C. has been filed by petitioner No.2 for herself and on behalf of her minor child i.e. petitioner No.1 on the grounds that she was married with the respondent on 04.09.2014. The petitioner No.1 was born on 16.10.2015. There was matrimonial discord between petitioner No.2 and the respondent and ultimately the petitioner No.2 was thrown out of her matrimonial house by the respondent on 04.09.2017 and thereafter, she along with minor petitioner had been residing with her parents. She submitted that the respondent had neglected and refused to maintain them. Her minor child and herself prayed for directing him to pay maintenance. Alongwith the main petition, the petitioners had filed an application for grant of interim maintenance thereby making prayer for directing the respondent to pay maintenance to the tune of Rs.1,00,000/- per month.

4. The respondent filed reply to the said application admitting the relationship between the parties and submitted that the petitioner No.2 had left his company out of her own will. A petition under Section 13-B of Hindu Marriage Act was filed by him against her. She was highly qualified and was earning. Both the petitioners were already getting maintenance

allowance from the respondent through the army authorities. It was also submitted that the net salary of the respondent was Rs. 1,71,000/- per month. However, it was denied that the petitioners were entitled to any maintenance.

5. The impugned order dated 05.11.2022 was passed by the learned Family Court, after considering the contentions respectively raised by learned counsel for both the parties and on the basis of material placed on record. As both the parties are dissatisfied from the impugned order, therefore, the petitioners have filed revision petition No. 531 of 2023 seeking modification in the impugned order by way of enhancement in the amount of interim maintenance, whereas, the respondent has made prayer for setting aside that order by filing revision petition No. 1236 of 2022.

6. The contention of the petitioners is that they are unable to maintain themselves and are having no source of income. The petitioner No.2 was earlier living alongwith her parents but now she is residing in Himachal Pradesh in a rented accommodation after the death of her parents. She is making payment of rent at the rate of Rs.10,500/-. It is also submitted that the petitioner No.2 has to regularly travel to Panchkula to attend several cases, which are pending between the parties and has to spend money on her travelling. Apart from this, she requires sufficient money for meeting with day to day requirements not only of herself but as well as of her minor son of food, lodging, tutions, clothing and other expenses. It is argued that the learned trial Court while passing the impugned order ignored the fact that the respondent was earning a sum of Rs. 1,71,000/- per month and the petitioners were entitled to live with the same standard of life which was at

par with the income and status of the respondent and that the amount of interim maintenance so directed to be paid to them was not commensurate with the income of the respondent who has no other liabilities. With these broad submissions, learned counsel for the petitioners has argued that the amount of interim maintenance be enhanced to Rs. 1,00,000/- per month so that the petitioners can live a life of dignity. To fortify his arguments, learned counsel for the petitioners has placed reliance upon the authority cited as ***‘Manish Jain Vs. Akanksha Jain : (2017) 15 SCC 801.***

7. *Per contra*, respondent who has been appearing in person has submitted written arguments. In addition to the written arguments, he has also orally submitted that the impugned order is liable to be set aside as the amount of maintenance which has been directed to be paid by him to the respondent is excessive and the petitioner No.2 is even otherwise not entitled to receive any maintenance from him as she has left his company at her own thereby compelling him to file a petition for seeking divorce though that too has been dismissed and an appeal filed by him against the same is pending. It is contended that the petitioner No.2 has been guilty of committing several acts of misconduct. He has even filed a complaint under Section 499 of IPC against petitioner No.2 for defaming him amongst his colleagues and army authorities wherein she has been ordered to be summoned as an accused. So far, he has already paid maintenance to the tune of about Rs. 28,00,000/- to the petitioners. The petitioner No.2 wants to take benefit of her own wrong. She is not even willing for rehabilitation with the respondent without any reasonable cause. She being a highly qualified person is in a position to

support herself and their minor child or at least make some contribution for maintenance of their son. She simply wants to extract money from him for living a luxurious life. The amount of maintenance as directed to be paid to the petitioners is excessive and extravagant which would encourage the petitioner No.2 to remain idle by choice in order to reap monetary benefits. Hence, it is urged that the impugned order be set aside. To fortify his argument, the respondent has placed reliance upon the authorities cited as '*Rajnesh Vs. Neha and another, 2021(2) SCC 324*' and '*Smt. Mamta Jaiswal Vs. Rajesh Jaiswal, II (2000) DMC 170*'.

8. Section 125 of Cr.P.C. provides a swift economic/affordable remedy against any person who neglects or refuses to maintain his wife or children. The prime object of this provision is to prevent starvation and vagrancy and to compel a man to perform the moral obligation which he owes to the society in respect of his wife and children so that they are not left beggared or destituted on the scrapheap of the society and thereby driven to a life of vagrancy, immorality and crime for their subsistence. The powers under this Section are to be exercised with discretion in a judicious manner which is consistent with the language of the statute with regard to the other relevant circumstances. The Hon'ble Supreme Court in its celebrated judgment titled as '*Rajnesh's case (supra)*' has issued detailed guidelines about the manner in which maintenance payable under Section 125 of Cr.P.C. is to be assessed by observing that the terms of maintenance are to be decided on the basis of pleadings of the parties and on basis of some amount of guess work and further to ensure that the depending spouse

is not reduced to destitution or vagrancy but not as a punishment to the other spouse.

9. The factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife.

10. It has also been well settled that the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income *ipso facto* does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications.

11. Reliance can also be placed upon ***Manish Jain's case (supra)***,

wherein Hon'ble Supreme Court had observed that the maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife and the child are able to maintain themselves with reasonable comfort.

12. I have heard both the parties at considerable length and have gone through the record carefully.

13. In the instant case, the respondent is an able bodied person serving in Army, who at the time of passing of the impugned order was admittedly drawing monthly income of Rs. 1,71,000/-. His version is that it is the petitioner No.2 who has left his company out of her own will and he had never neglected and refused to maintain the petitioners. Any finding on the allegations as levelled by the petitioner and counter allegations of the respondent can be arrived at by the family Court only after thorough assessment and evaluation of the evidence to be adduced by them during the trial and not at this stage. The parties are admittedly living separately since the year 2017. The marriage between the petitioner No.2 and the respondent is still subsisting as the petition for divorce filed by him, has admittedly been dismissed, though an appeal is stated to be pending against the said order. There is no dispute about the fact that petitioner No.2 is a well qualified person but nothing has been brought on record that she is making any earnings or is having any source of income. Undisputedly, the wife is also

obliged to contribute towards the maintenance of the child if she is proved to be earning but that is not the situation in the instant case.

14. Reliance has been placed upon *Mamta Jaiswal's case (supra)* by the respondent, wherein the the High Court of Madhya Pradesh had observed that in cases of matrimonial disputes, qualified spouse desirous of remaining idle not making efforts to find out a source of livelihood have to be discouraged by not granting luxurious interim maintenance to them. It may be mentioned that it is equally well settled proposition of law that the wife and children are entitled to be maintained by the husband/father, to the same status which they were having while they were living with him and which is maintained by himself also. Ofcourse, the purpose of directing the respondent to pay maintenance to his wife and children is not to oppress him but at the same time, his wife and child are entitled to receive that much amount of maintenance which is reasonable and realistic and neither can be considered as unbearable for the respondent nor can be stated to be so meager that it amounts to dragging the petitioners to penury. The petitioners were certainly accustomed to a good standard of living, when they were with the respondent. There is nothing on record to suggest that he is having any other liability. The learned Family Court taking all these factors into consideration had given direction for payment of an amount of Rs. 25,000/- per month to the minor petitioner No.1 and Rs. 40,000/- per month to petitioner No.2 as interim maintenance. This amount cannot be stated to be excessive/exorbitant while taking into consideration, the income of the respondent as well as day to day expenses of the petitioners which obviously

include lodging, boarding, clothing and medical expenses of both the petitioners as well as education, coaching class, extra curriculum activities of the minor petitioner. In the considered opinion of this Court, the amount which has been paid by the respondent is just, reasonable and realistic. Moreso, the final amount of maintenance has to be assessed on the basis of evidence which will be led before the Family Court as the amount which has now been directed to be paid to the petitioners is by way of interim measure only. In view of this discussion, it is held that the prayer made by the petitioners for enhancement in the amount interim maintenance directed to be paid by the respondent as well as prayer made by the respondent for setting aside the impugned order, do not deserve to be accepted. The order passed by the family Court cannot be stated to be suffering from any illegality much less infirmity, Accordingly, it is held that the findings given by the family Court deserve to be upheld and do not warrant any interference by this Court. Hence, the petitions filed by both the parties are ordered to be dismissed.

15. Since the main petitions have been dismissed, pending application if any is rendered infructuous.

16. Photocopy of this order be placed on the file of connected case.

[MANISHA BATRA]
JUDGE

18th April, 2024
Parveen Sharma

1. Whether speaking/ reasoned

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Yes
2. Whether reportable

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Yes