

CRR(F)-495-2023 and one more case

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**217 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

1. **CRR(F)-495-2023 (O&M)**
Date of Decision: 25.11.2024
NANCY AND ANOTHER **...Petitioners**

Versus

GAGANDEEP **...Respondent**

2. **CRR(F)-1453-2023 (O&M)**
Date of Decision: 25.11.2024
GAGANDEEP **...Petitioner**

Versus

NANCY AND ANOTHER **...Respondents**

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

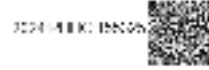
Present: Mr. Pradeep Duhan, Advocate
for the petitioners (in CRR(F)-495-2023) and
for the respondents (in CRR(F)-1453-2023).

Ms. Parbeen Dhaliwal, Advocate for
Ms. Gunjan Mehta, Advocate for
the petitioner (in CRR(F)-1453-2023) and
for the respondent (in CRR(F)-495-2023).

Harpreet Singh Brar J.(Oral)

1. This order of mine shall dispose of these two revision petitions impugning the same judgment dated 27.02.2023 passed by learned Principal Judge, Family Court, Kurukshetra in maintenance petition No. MNT-232-2019, whereby petitioners-wife and minor daughter have been directed to be paid an amount of Rs. 22,000/- per month i.e. Rs. 15,000/- per month to petitioner No. 1-wife and Rs. 7,000/- per month to petitioner No. 2-minor daughter-Aneeva as maintenance by respondent-husband.

2. For the sake of brevity, facts are borrowed from CRR(F)-495-2023, with the consent of learned counsel(s) for the parties.

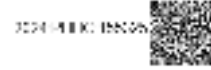


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3. The marriage between the petitioner No. 1-wife and respondent-husband was solemnized on 03.12.2014 according to Hindu rites and ceremonies. One female child i.e. petitioner No. 2-Aneeva was born from the said wedlock. However, matrimonial dispute ensued between the couple and petitioners i.e. wife and minor daughter, filed a petition under Section 125 Cr.P.C. seeking maintenance. Respondent-husband contested the claim made by petitioners and filed reply to the said petition. Learned Family Court, Kurukshetra vide impugned judgment dated 27.02.2023 awarded maintenance to the tune of Rs. 22,000/- per month i.e. Rs. 15,000/- per month to petitioner No. 1-wife and Rs. 7,000/- per month to petitioner No. 2-minor daughter-Aneeva. Aggrieved by the same, both the petitioners-wife and minor daughter and respondent-husband have preferred these revision petitions.

4. Learned counsel for the petitioners *inter alia* contends that in spite of the fact petitioners have duly proved the income of respondent-husband as Ex. R-1 and salary slip for the month of October-2022 was proved on record and respondent-husband was proved to be earning Rs. 1,03,991/- per month, learned Family Court has erred in not taking the gross salary of respondent-husband into consideration while awarding maintenance and it is a trite law that only statutory deductions are to be excluded while awarding amount of maintenance and no EMI towards repayment of any loan etc. cannot be taken into consideration for determining the income of the respondent. Further the respondent is also getting medical, travel and newspaper allowance and the respondent has no other liability. Thus, an amount of Rs. 18,000/- per month as repayment



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towards two loans cannot be taken into consideration as the income tax deduction to the extent of Rs. 17,000/- per month can only be considered.

5. Per contra, learned counsel for the respondent-husband opposes the prayer made by learned counsel for the petitioners on the ground that petitioner No. 1-wife is a well qualified lady and she has potential to earn her livelihood. Moreover, the amount of maintenance i.e. Rs. 22,000/- awarded in favour of petitioners is already on the higher side and learned Family Court has not taken into consideration the facts and circumstances of the case.

6. I have heard the learned counsel for the parties and gone through the case file with their able assistance.

7. The object and purpose behind granting maintenance is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of failure of marriage. At the same time, a just and careful balance must be struck to ensure that this provision does not degenerate into a weapon to punish the other spouse. The Courts are required to conduct the maintenance proceedings while being alive to the legislative intent behind the provision under Section 125 Cr.P.C in its true spirit, which is to provide speedy assistance and social justice to women, children and infirm parents. The provisions of Section 125 Cr.P.C. were enacted as a measure to further social justice and protect dependent women, children and parents, which also fall within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India.

8. 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, opined that as follows:

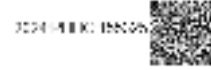
“3. Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing, and shelter to the deserted wife.”

A two-Judge Bench of the Hon'ble Supreme Court in *Kirtikant D. Vadodaria v. State of Gujarat (1996) 4 SCC 479*, speaking through Justice Faizan Uddin, 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.”

9. Another objective the legislature has sought to achieve by this provision is to provide maintenance *pendente lite* to the applicant spouse during proceedings emerging out of matrimonial disputes so that the she/he can maintain herself/himself, have sufficient funds to pursue the litigation, and not suffer at the instance of the affluent spouse.

10. There is a general tendency on the part of the wife to amplify her needs and the husband to conceal his actual income, making it difficult to determine the earning capacity of the rival claimants with exactitude. The rival claimants must scrupulously bring on record their actual respective



earning capacities in order for the Court to arrive at quantum of maintenance which is just and fair in terms of principle of equistatus. The quantum of maintenance must be justifiable and realistic to provide succour to the dependent spouse and also to avoid occurrence of the two extremes of the maintenance being either paltry or extravagant, ensuring that neither of the two is reduced to a life of penury. The adequacy of the maintenance allowance has to be determined by the yardstick of the dependent spouse being able to lead a life of reasonable comfort.

11. While dealing with the issue of maintenance *in extenso*, a two Judge bench of the Hon'ble Supreme Court in **Rajnesh v. Neha and another (2021) 2 SCC 324**, laid down the criteria for determining quantum of maintenance and issued the following directions:

"VI Final Directions

130. *In view of the foregoing discussion as contained in Part B -I to V of this judgment, we deem it appropriate to pass the following directions in exercise of our powers under Article 142 of the Constitution of India:*

(a) Issue of overlapping jurisdiction

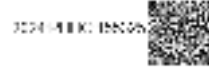
131. *To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that:*

(i) where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or setoff, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding;

(ii) it is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding;

(iii) if the order passed in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding

(b) Payment of Interim Maintenance



132. The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the concerned Family Court / District Court / Magistrates Court, as the case may be, throughout the country.

(c) Criteria for determining the quantum of maintenance

133. For determining the quantum of maintenance payable to an applicant, the Court shall take into account the criteria enumerated in Part B III of the judgment.

134. The aforesaid factors are however not exhaustive, and the concerned Court may exercise its discretion to consider any other factor/s which may be necessary or of relevance in the facts and circumstances of a case.

(d) Date from which maintenance is to be awarded

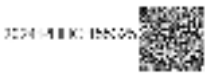
135. We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B-IV above.

(e) Enforcement/Execution of orders of maintenance

136. For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1956; Section 20(6) of the D.V. Act; and Section 128 of Cr.P.C may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC more particularly Sections 51, 55, 58, 60 r.w. Order XXI."

12. Having heard learned counsel for the parties and perusing the record, this Court finds force in the arguments advanced by learned counsel for the petitioners-wife and minor daughter. Perusal of record indicates that after excluding income tax deduction from the salary of the respondent-husband, his income would be around Rs. 80,000/- per month. In view of the ratio of law laid down by Hon'ble Supreme Court in ***Kalyan Dey Chowdhary vs. Rita Dey Chowdhary Nee Nandy AIR 2017 SC 2383***, it has been held that wife is entitled to one fourth of the net salary of the respondent-husband.

11. In view of the above, revision petition No. **CRR(F)-495-2023** is disposed of in following terms:



- (i) Amount of maintenance awarded to petitioner No. 1-wife-Nancy is enhanced from Rs. 15,000/- per month to Rs. 20,000/- per month.
- (ii) Amount of maintenance of Rs. 7,000/- per month awarded in favour of petitioner No. 2-minor daughter shall remain intact.

Thus, the respondent-husband is directed to pay a total amount of Rs. 27,000/- per month i.e. Rs. 20,000/- per month to petitioner No. 1-wife and Rs. 7,000/- per month to petitioner No. 2-minor daughter from the date of final order in the present petition.

13. However, the revision petition No. CRR(F)-1453-2023 filed by respondent-husband is hereby dismissed being bereft of any merit.
14. Pending CRM(s), if any, are also disposed of accordingly.

(HARPREET SINGH BRAR)

JUDGE

25.11.2024

Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No