



236 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR(F)-336-2022 (O & M)
Reserved on : 17.07.2024
Pronounced on : 18.07.2024

SAROJ

...PETITIONER

V/S

HAWA SINGH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Shashi Kumar Yadav, Advocate
 for the petitioner.

 Mr. Krishan Sharma Bhardwaj, Advocate for
 Mr. Rajvijay Singh, Advocate for the respondent.

HARPREET SINGH BRAR J. (ORAL)

1. The present petition has been preferred against the impugned order dated 31.03.2022, passed by the learned Family Court, Rewari, vide which, application seeking maintenance under Section 125 of the Cr.P.C. has been dismissed.

2. The marriage between the petitioner and the respondent was solemnized on 02.02.1999, in accordance with Hindu rites and rituals. Out of the wedlock, three children (one male and two female) were born. However, matrimonial dispute ensued between the couple and the petitioner filed a petition under Section 125 Cr.P.C. seeking maintenance. The respondent filed a reply and contested the claim made by the petitioner. The learned Family Court vide order dated 31.03.2022, dismissed the application filed by the petitioner. Aggrieved by the same, the petitioner has approached this Court by filing the present petition.



3. Learned counsel for the petitioner *inter alia* contends that the respondent intentionally neglected and deserted the petitioner from her matrimonial home. Learned counsel further submits that the petitioner has no independent source of income to maintain herself whereas, the respondent is serving in M/s Wheel India Private Limited Company, Bawal as Helper and is earning Rs.20,000/- per month. The respondent is legally and morally bound to maintain the petitioner and she is entitled to Rs.10,000/- per month as maintenance.

4. Learned counsel for the respondent submits that petitioner had left the company of the respondent without any reason by her own will. Learned counsel further submits that the petitioner is living in adultery with one Subhash son of Dhan Singh since 27.02.2018. It is further submitted that the petitioner had left her three children with the respondent. Learned counsel further submits that respondent wants to keep the petitioner with him, but she refused to join his company. It is further contended that the respondent is unemployed person and maintaining the minor children.

5. Having heard the learned counsel for the parties and after perusing the record of the case, the matter is taken up for final disposal.

6. 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.

7. 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.”

8. 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.

9. While dealing with the issue of maintenance *in extenso*, a two Judge bench of the Hon’ble Supreme Court in ***Rajnish 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 - 1 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."*

10. A perusal of the impugned order passed by the learned Family Court makes it evident that the Court below has duly considered the material placed before it at the time of deciding the application for maintenance. The learned Family Court has observed that the petitioner is living in adultery with Subhash and furthermore, she is doing the work at shop and selling the fruits, therefore, she can maintain herself. As such, she is not entitled to maintenance

whereas, the respondent is earning meagre salary and also maintaining his three children. As such, learned counsel for the petitioner has not been able to indicate any perversity in the impugned order which warrants interference by this Court. Accordingly, the present petition is dismissed being bereft of any merit.

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

Reserved on : 17.07.2024
Pronounced on : 18.07.2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |