



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

CRR(F)-852-2024
Date of decision: 20.08.2024

SANGEETA DAHIYA AND OTHERS

...PETITIONERS

V/S

BRIJESH DAHIYA

...RESPONDENT

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Shivraj Malik, Advocate
 for the petitioners.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been preferred against judgment dated 06.03.2024 passed by learned Family Court, Rohtak under Section 125 of the Cr.P.C., vide which, interim maintenance of Rs.2,400/- per month was awarded to petitioner No.2 up to 25.02.2023 and Rs.1,500/- per month to petitioner No.3 and petitioner No.1 has been deprived from the same.
2. The marriage between petitioner No.1 and the respondent was solemnised on 06.07.2003 at Rohtak in accordance with Hindu rites and ceremonies. Out of this wedlock, two male children (petitioner Nos.2 and 3 herein) were born. However, matrimonial dispute ensued between the couple and petitioners filed a petition under Section 125 Cr.P.C. seeking interim maintenance. The respondent filed a reply and contested the claim made by the petitioners. The learned Family Court vide order dated 06.03.2024 granted interim maintenance Rs.2,400/- per month to petitioner No.2 up to 25.02.2023 and Rs.1,500/- per month to petitioner No.3. Aggrieved by the same, the petitioners have approached this Court by filing the present petition.



3. Learned counsel for the petitioners *inter alia* contends that petitioner No.2 was granted interim maintenance till the date of majority, however, petitioner No.3 was granted only Rs.1,500 per month as interim maintenance and petitioner No.1 was denied any interim maintenance by the learned Family Court. The learned Family Court has fell into grave error by awarding a very meagre sum and that too till the age of majority.

4. Having heard the learned counsel for the petitioners and after perusing the record with his able assistance, this Court finds no force in the arguments advanced by learned counsel for the petitioners. It is admitted case that petitioner No.1 is working as a Teacher in 'The Little Shri School' at Rohtak and her salary slip for the month of April, 2021 was available on record. As such, she has been denied interim maintenance by learned Family Court below. However, with regard to grant of maintenance to the major children, the law is well settled and reliance in this regard can be placed upon a judgment passed by the Hon'ble Supreme Court passed in ***Abhilasha vs. Parkash*** in ***Criminal Appeal No. 615 of 2020*** decided on 15.09.2020.

5. The object and purpose behind granting interim 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.

6. 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.”



7. Another objective the legislature has sought to achieve by this provision is to provide interim 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.

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 interim maintenance which is just and fair in terms of principle of equistatus. The quantum of interim maintenance must be justifiable and realistic to provide succour to the dependent spouse and also to avoid occurrence of the two extremes of the interim maintenance being either paltry or extravagant, ensuring that neither of the two is reduced to a life of penury. The adequacy of the interim 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 ***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 - 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 interim maintenance. The learned Family Court has observed that petitioner No.1 is currently employed, therefore, she is not entitled to maintenance and respondent is an able bodied person and is liable to maintain petitioner Nos.2 and 3 only till they attain the age of majority. Moreover, the amount of maintenance awarded by learned Family Court below is only interim in nature subject to an adjustment at the time of final disposal and the parties are yet to prove their respective pleadings before the learned Family Court by adducing evidence in their support. Learned counsel for the petitioners 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. Nothing observed hereinabove shall be construed to be an expression of opinion by this Court lest it may prejudice the trial. The learned Family Court is directed to proceed with the trial on its own merits, strictly in accordance with law.

August 20, 2024
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(HARPREET SINGH BRAR)
JUDGE

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