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

**CRR(F)-536-2024 (O&M)**

**Date of decision:30.09.2024**

RASHMI

... PETITIONER

V/s

ROHIT

... RESPONDENT

**CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**

Present: Mr. Anil Kumar Ranolia, Advocate for the petitioner.

None for the respondent.

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**SUMEET GOEL, J.**

1. Present criminal revision petition is filed seeking enhancement of the maintenance amount as granted by the learned Additional Principal Judge, Family Camp Court, Pataudi, Gurugram vide judgment dated 06.12.2023, in case No. MNT-125/417/2018.

2. Facts relevant to the adjudication of the present case are that the marriage between the petitioner and respondent was solemnized on 09.12.2016. A male child was born out of the wedlock of the parties on 10.10.2018. The petitioner (wife) filed a petition under Section 125 of the Code of Criminal Procedure, 1973, seeking grant of maintenance against the respondent (Husband). While allowing the said petition for grant of maintenance filed by the petitioner, the learned Family Court granted maintenance to the tune of Rs.10,000/- per month to the petitioner and Rs.5,000/- per month to the minor child, who is in the custody of the petitioner, from the date of passing of the judgment i.e. 06.12.2023.

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3. Dissatisfied with the quantum of maintenance granted by the learned Family Court, the petitioner has filed the present criminal revision petition seeking enhancement of the maintenance amount.

4. It is argued by the learned counsel for the petitioner that the learned Family Court, while assessing the amount of maintenance in the case has not adopted a pragmatic approach and has not rightly considered the income of the respondent and just and reasonable requirements of the petitioner to have the standard of life, at par with the respondent. It is argued that the respondent in his Affidavit of Assets and Liabilities, has disclosed his monthly salary as Rs.47,171/- (in hand). Whereas, his salary slip for the month of April, 2021 shows that he was drawing Rs.55,557/- as total salary and Rs.47,276/- as net salary per month. It is argued that the respondent has not placed his income tax returns to fudge up his actual income. It is argued that the learned Family Court has committed a manifest error in granting the maintenance from the date of judgment instead of the date of filing of the maintenance petition.

5. Notice in the present revision petition was issued and duly served upon the respondent. However, none has entered appearance on behalf of the respondent, even after affording sufficient opportunities.

6. I have heard the learned counsel for the petitioner and have gone through the case record carefully.

7. The learned Family Court in the impugned judgment has held 'that the respondent on his own has not been able to prove that

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there have been any efforts from his side and he has failed to explain as to why the petitioner was not kept by him at the matrimonial house whenever she went to join his company. In such circumstances, on account of serious disputes, they are residing separately from each other. Therefore, it cannot be said that the petitioner is residing with the respondent willingly. Rather, she is compelled to live separately.’ In absence of any challenge by the respondent, this finding arrived at by the learned Family Court, attains finality.

8. The main challenge in this present revision petition filed on behalf of the wife (petitioner) is in respect of the quantum of maintenance as assessed by the learned Family Court, and the date from which the respondent was ordered to pay the maintenance amount, so assessed, vide the impugned order. Before delving into these issues, it is pertinent to take note of the fact that although, the minor child, born out of the wedlock of the parties, who is in the custody of the petitioner, was not impleaded as a petitioner-claimant in the original petition for maintenance, however, the learned Family Court, in its discretion, chose to grant maintenance in favour of the minor child also. The said action of the learned Family Court, being in furtherance of the benevolent objectives of Section 125 of the Cr.P.C., 1973, cannot be impugned on legal grounds. A perusal of Section 125 of the Code of Criminal Procedure, 1973 unequivocally establishes that the said provision comes into play when it is proved before the Court that any person, possessing sufficient means, neglects or refuses to maintain, *inter-alia*, his wife, unable to

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maintain herself, as well as his minor child, unable to maintain himself. In view of the language used in Section 125 of the Criminal Procedure Code, 1973, pivotal, is the proof of neglect by the respondent towards his wife and minor children. Any such neglect can be sufficiently proved by the wife, acting as the petitioner, qua the neglect of child also, though the child may not have been independently impleaded as a party to the petition. Moreover, it would be antithetical to the very spirit and purpose of provisions of Section 125 of the Code of Criminal Procedure, 1973, to interpret that the wife, without formally impleading the minor child with her as party to the petition, cannot claim maintenance on behalf of the minor child. The very existence and sustenance of the minor child, living in the custody of the wife, being inherently dependent upon the wife's financial capability to maintain herself, cannot be construed extrinsically as such capability of the wife. It would be wholly imprudent to conclude that the wife, though not capable of maintaining herself, and as such claiming maintenance from her husband, is able to maintain the minor child. Consequently, the right of a minor child to claim maintenance remains subsumed within the mother's petition for maintenance, even if the child has not been formally named as a party to the proceedings. Inspiration in this regard may be drawn from an observation made by the Hon'ble Supreme Court in the case of *Smt. Jasbir Kaur Sehgal versus The District Judge, Dehradun: AIR 1997 (SC) 3397*, relevant whereof reads as under:-

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“6.xxxx

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*Section 24 of the Act no doubt talks of maintenance of wife during the pendency of the proceedings but this section, in our view, cannot be read in isolation and cannot be given restricted meaning to hold that it is the maintenance of the wife alone and no one else. Since wife is maintaining the eldest unmarried daughter, her right to claim maintenance would include her own maintenance and that of her daughter.*

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Thus, when the livelihood, sustenance, and education of the minor children are in question, the Courts must act as a custodian of the minor child/children. It is the bounden duty of the Court to ensure that the interest of the minor child/children are protective and they are not left to suffer the brunt of destitution on some hyper-technical grounds. Be that as it may, the respondent in the present case has chosen not to challenge this finding by the learned Family Court. Consequently, the same has attained finality qua the rights of the respondents.

9. Now, addressing the question of quantum of maintenance, it is essential to ensure that the amount awarded is commensurate with the respondent’s financial standing and capacity. The determination of quantum must be done after taking into account not only the respondent’s disclosed income, but also any other pecuniary advantages, benefits or allowances that he may be entitled to by virtue of his employment. The guiding principles in such matters is to ensure that the petitioners and the minor child are able to maintain a standard of living consistent with the respondent’s means.

The learned Family Court, while adjudicating upon the issue of

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maintenance in 2023, determined the quantum of maintenance for the petitioner and the minor child based upon respondent's Affidavit of Assets and Liabilities, wherein his salary was disclosed at Rs.47,171/- per month for the year 2021. However, the salary slip placed on record for the month of April, 2021, reveals that the respondent was actually drawing a net salary of Rs.55,557/- per month. It is imperative to note that the deductions reflected in respondent's salary, which would constitute deferred income that will accrue to him at a future date, cannot be excluded from the computation of his financial capacity while determining the petitioner's and the minor child's entitlement to maintenance. Such deductions, being part of the respondent's overall earnings, must be considered in order to fairly ascertain the financial resources at his disposal. To exclude such deductions would be to unjustifiably diminish the standard of living to which the petitioner and the minor child are entitled, as they are entitled to enjoy a lifestyle commensurate with that of the respondents.

Furthermore, the respondent, holding the post of Sub-Inspector in Central Industrial Security Force (CISF), undoubtedly avails several additional emoluments, allowances, and non-monetary benefits by virtue of his official position. These perks being part of his employment should be factored into the overall assessment of the maintenance required. It is well-settled that maintenance should reflect not merely the monthly income but the full financial capacity of the respondent, thereby ensuring that the petitioner and the minor



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child are maintained in a manner consistent with the respondent's standard of living and financial status. In this regard, it is pertinent to refer herein to a judgment passed by this Court in a case titled as ***Gunjan and another versus Gaurav Kumar Bhatia, 2016 (3) RCR (Criminal), 578***, relevant whereof reads as under:

*“15. In the considered view of this Court, the deductions under various heads, as noticed herein above, cannot be discarded while assessing the income of the husband for purposes of grant of maintenance to the present petitioners. The benefit of such deductions would ultimately enure to the benefit of the respondent-husband at the appropriate stage and time. As such, it would be safe to conclude that the monthly emoluments of the respondent-husband are much in excess of Rs.61,000/-.”*

9.1 Accordingly, the quantum of maintenance as awarded by the learned Family Court to the petitioner as well as the minor child is liable to be modified to the extent of enhancing the maintenance from Rs.10,000/- per month to Rs.15,000/- per month in favour of petitioner wife and from Rs.5,000/- per month to Rs.10,000/- per month to the minor son.

10. The aspect that vide the impugned order, the learned Family Court, has directed the amount of maintenance to be paid by the respondent, from the date of judgment, instead from the date of filing of petition under Section 125 of Cr.P.C., 1973, in my considered opinion is erroneous in the facts and circumstances of the present case. In this regard, it is pertinent to refer herein to the dicta of Hon'ble Supreme Court in the case of ***Rajnish vs Neha &***



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**another, 2020(4), RCR (Criminal) 879**, relevant whereof reads as under:

*“116. The judgments hereinabove reveal the divergent views of different High Courts on the date from which maintenance must be awarded.*

*117. Even though a judicial discretion is conferred upon the Court to grant maintenance either from the date of application or from the date of the order in Section 125(2) Cr.P.C., it would be appropriate to grant maintenance from the date of application in all cases, including Section 125 Cr.P.C., 1973 In the practical working of the provisions relating to maintenance, we find that there is significant delay in disposal of the applications for interim maintenance for years on end. It would therefore be in the interests of justice and fair play that maintenance is awarded from the date of the application.*

*118. In the case of **Shail Kumari Devi and Ors. v. Krishnan Bhagwan Pathak (2008) 9 SCC 632**, this Court held that the entitlement of maintenance should not be left to the uncertain date of disposal of the case. The enormous delay in disposal of proceedings justifies the award of maintenance from the date of application. In the case of **Bhuwan Mohan Singh v. Meena (2015) 6 SCC 353**, this Court held that repetitive adjournments sought by the husband in that case resulted in delay of 9 years in the adjudication of the case. The delay in adjudication was not only against human rights, but also against the basic embodiment of dignity of an individual. The delay in the conduct of the proceedings would require grant of maintenance to date back to the date of application.*

*119. The rationale of granting maintenance from the date of application finds its roots in the object of enacting maintenance legislations, so as to enable the wife to overcome the financial crunch which occurs on separation from the husband. Financial constraints of a dependant spouse hampers their capacity to be effectively represented before the Court. In order to prevent a dependant from being reduced to destitution, it is necessary that maintenance is awarded from the date on which the application for maintenance is filed before the concerned Court.*

*120. In the case of **Badshah v. Urmila Badshah Godse (2014) 1 SCC 188**, the Supreme Court was considering the interpretation of Section 125 Cr.P.C., 1973 The Court held :*



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*"13.3. ...purposive interpretation needs to be given to the provisions of Section 125 CrPC, 1973. While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalized sections of the society. The purpose is to achieve "social justice" which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of the social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society."*

*121. It has therefore become necessary to issue directions to bring about uniformity and consistency in the orders passed by all Courts, by directing that maintenance is awarded from the date on which the application was made before the concerned Court. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant."*

The above enunciated legal principle in **Rajnesh** (supra), leaves no room for any doubts as to the date from which the maintenance amount ought to have been awarded. As such, with regard to the date of entitlement of the petitioner to receive maintenance, the impugned judgment passed by the learned Family Court is liable to be modified, and the same is hereby directed to be paid from the date of filing of the petition under Section 125 Code of Criminal Procedure, 1973 before the Family Court.

11. In view of the above discussion on facts as well as law, the present revision petition is hereby allowed and the impugned order is modified to the extent that the petitioner as well as the minor child,



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are accordingly entitled to receive the maintenance from the respondent @ Rs.15,000/- per month; and Rs.10,000/- per month respectively, from the date of filing of the petition under Section 125 Code of Criminal Procedure before the concerned Family Court. The amount already paid by the respondent to the petitioner and minor child as interim maintenance or final maintenance, shall be entitled to be adjusted in the same.

12. The instant criminal revision petition is allowed accordingly.

13. Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)  
JUDGE

September 30, 2024  
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Whether speaking/reasoned:  
Whether reportable:

Yes/No  
Yes/No