



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

CRM-M-36304-2018
Date of decision: 31.07.2024

Sushma Yadav and anotherPetitioners

Versus

Kaushal Yadav ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Karan Diwan, Advocate
for Mr. Ram Pal Verma, Advocate
for the petitioners.

None for the respondent.

HARPREET SINGH BRAR, J.

1. The present petition has been preferred under Section 482 Cr.P.C. against impugned order dated 23.03.2018 (Annexure P-4) passed by the learned Additional Sessions Judge, Jhajjar whereby the revision petition filed by the petitioners against order dated 06.08.2016(Annexure P-2) passed by the learned Judicial Magistrate Ist Class, Jhajjar (hereinafter 'JMIC'), has been partly allowed.

2. Briefly, the facts are that the marriage between the petitioner No.1 and respondent was solemnised on 11.12.2019. A daughter i.e. petitioner No.2 was born out of this wedlock. However, marital discord ensued and the marriage between the parties was dissolved by divorce decree dated 09.01.2012 under Section 13-B of the Hindu Marriage Act, 1955. Thereafter, the petitioners filed for maintenance under Section 125 Cr.P.C. which was dismissed by the learned JMIC, Jhajjar Aggrieved by the same, the petitioners preferred a revision petition before the learned Court below, which was allowed vide



impugned order dated 23.03.2018 whereby petitioner No.2 was awarded interim maintenance of Rs. 20,000/- till the age of seven years while the claim of petitioner No.1 was rejected as she had already received a permanent alimony of Rs. 21,50,000/-.

3. Learned counsel for the petitioners, *inter alia*, contends that petitioner No.1 was the legally wedded wife of the respondent and does not have any source of income to maintain herself. The respondent is a businessman and owns a number of petrol pumps. He also has about 200 acres of agricultural land, which makes about Rs. 3,00,000/- per month. The respondent is legally and morally bound to maintain the petitioners and as such, it would only be appropriate to enhance the interim maintenance granted to the petitioners to Rs. 1,00,000/-.

4. Having heard learned counsel for the petitioner and after perusing the record with his able assistance, it transpires that the marriage between petitioner No.1 and the respondent stands dissolved vide decree of divorce dated 09.01.2012 issued under Section 13-B of the Hindu Marriage Act, 1955. At the time of the divorce, it was agreed that petitioner No.2 would remain in custody of petitioner No.1 till she is seven years of age, post which her custody would be transferred to the respondent. Consequent to the compromise arrived at during the divorce, petitioner No.1 has also received Rs. 21,50,000/- as permanent alimony from the respondent. As such, the learned Court below has correctly awarded Rs. 20,000/- per month as interim maintenance to petitioner No.2 while denying relief to petitioner No.1.

5. 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.

6. A three-Judge Bench of the Hon'ble Supreme Court in ***Vimala (K.) Vs. Veeraswamy (K.) (1991) 2 SCC 375***, speaking through Justice Fatima Beevi, opined 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.”

7. Further, a two-Judge Bench of the Hon'ble Supreme Court in ***Kirtikant D. Vadodaria Vs. 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 vs. Neha and another (2021) 2 SCC 324***, 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.

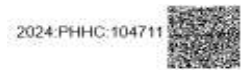
(d) Date from which maintenance is to be awarded

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. At this stage, the learned Court below has only awarded interim maintenance and the parties are yet to prove their respective pleadings before the learned Family Court by adducing evidence to support their claims. As such, it would not be reasonable to intervene and initiate parallel proceedings. Moreover, learned counsel for the petitioners has not been able to indicate any perversity in the impugned order which warrants interference by this Court.



11. Accordingly, the present petition is dismissed. Pending miscellaneous applications, if any, are also disposed of accordingly.
12. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

31.07.2024
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No