



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

CRM-M-37723-2018 (O & M)
Date of decision: 11.12.2024

SUKHJIT KAUR AND ANOTHER

...PETITIONERS

V/S

ASHOK KUMAR

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Gurvinder Singh Lali, Advocate
for the petitioners.

Mr. Ankush Singla, Advocate for
Mr. Parul Sarvar, Advocate for the respondent.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. for partly quashing of order dated 04.06.2018 qua petitioner No.1 and for enhancement of maintenance granted to petitioner No.2 amounting to Rs.3,000/- from 01.04.2018 onwards passed by learned Additional Sessions Judge, Barnala, in revision petition filed by the petitioners against order dated 10.04.2013 passed by learned Judicial Magistrate Ist Class, Barnala, whereby petition under Section 125 Cr.P.C. filed by the petitioners was dismissed.

2. The marriage between petitioner No.1 and respondent was solemnised on 12.11.2003 at village Dadheri, Tehsil Amloh. Out of this wedlock, one female child (petitioner No.2 herein) was born. However, matrimonial dispute ensued between the couple and petitioners filed a petition under Section 125 Cr.P.C. seeking maintenance. The respondent filed a reply and contested the claim made by the petitioners. Vide order dated 10.04.2013 passed by learned Judicial Magistrate Ist Class, Barnala, the petition under



Section 125 Cr.P.C. was dismissed. Thereafter, the petitioners preferred a revision petition against order dated 10.04.2013 and learned Additional Sessions Judge, Barnala, vide impugned order dated 04.06.2018 partly allowed the revision petition, while dismissing the claim of petitioner No.1 and granting maintenance allowance of ₹3,000/- per month in favour of petitioner No.2. 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 learned Court below has fallen into grave error by not awarding maintenance to petitioner No.1 and a very meagre amount of maintenance i.e. Rs.3,000/- in favour of petitioner No.2 was awarded, which is not in consonance with the actual income of the respondent. Learned counsel further submits that petitioner No.1 is illiterate and she has no source of income and the respondent is dealing with the business of sale and repair of new fridge and cooler in a shop at Barnala and is earning Rs.20,000/- per month.

4. *Per contra*, learned counsel for the respondent submits that petitioner No.1 along with the minor child has left the company of the respondent without any justifiable cause by her own. Learned counsel further submits that petitioner No.1 knits durries, sweaters and clothes, by which, she earns money and is capable of maintaining herself and her child.

5. Having heard the learned counsel for the parties and after perusing the record with their able assistance, there is no force in the argument of learned counsel for the petitioners that petitioner No.1 is entitled to maintenance. The Court below has duly considered the material while declining maintenance to petitioner No.1, however, it transpires that amount of maintenance awarded to petitioner No.2 is meagre in nature.



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 falls 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 ***Rajnesh v. Neha and another*** (*supra*), 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. It is evident that the learned Court below has duly considered the fact that the respondent is an able-bodied man and is liable to pay maintenance to petitioner No.2 and it is not her fault if petitioner No.1 and respondent have

indulged in litigation. However, learned Court below has failed to consider the fact that the amount of maintenance awarded to petitioner No.2 is not in consonance with the income of the respondent, in view of the fact that petitioner No.2 is minor and has no independent source of income.

11. Accordingly, the present petition stands disposed of and the impugned order is modified to the extent that amount of Rs.3,000/- per month awarded to the petitioner No.2 as maintenance is enhanced to Rs.4,000/- per month to be paid from the date of filing of petition under Section 125 Cr.P.C. till petitioner No.2 attains the age of majority in view of the judgment passed by a three Judge bench of the Hon’ble Supreme Court in *Abhilasha vs. Prakash 2020 AIR SC 4355*, whereby, with regard to grant of maintenance to the major children, the law is well settled.

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

December 11, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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