

221-1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 15.04.2024

1. CRM-M-39961-2018
POOJA VERMA AND ANOTHER
V/S
...PETITIONERS

JATIN VERMA
...RESPONDENT

2. CRM-M-46412-2018
POOJA VERMA AND ANOTHER
V/S
...PETITIONERS

JATIN VERMA
...RESPONDENT

3. CRM-M-44153-2021
JATIN ANAND
V/S
...PETITIONER

POOJA VERMA AND ANOTHER
...RESPONDENTS

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rohit Singh, Advocate and
Mr. S.S. Dinarpur, Advocate for the
petitioners in CRM-M Nos.39961 &46412 of 2018
& for respondent in CRM-M-44153 of 2021.

Mr. Sukhwinder Singh Sudan, Advocate
for the petitioner in CRM-M-44153 of 2021
& for the respondents in CRM-M Nos.39961
& 46412 of 2018.

HARPREET SINGH BRAR J. (ORAL)

This order of mine shall dispose of all the aforementioned

criminal revision petitions as they are directed against the same impugned

order dated 02.08.2018. However, for the sake of brevity, facts are borrowed from *CRM-M-39961-2018* titled as '*Pooja Verma and another vs. Jatin Verma*'.

2. The present petition has been preferred against the impugned judgment dated 27.03.2017 passed by the learned Sub Divisional Judicial Magistrate, Yamuna Nagar as well as order dated 02.08.2018 passed by learned Additional Sessions Judge, Yamuna Nagar, whereby no maintenance has been granted to petitioner No.1 and further prayer is for granting maintenance of Rs.10,000/- per month to petitioner No.1 and Rs.15,000/- per month to petitioner No.2.

3. The marriage between the petitioner No.1 and respondent was solemnised on 17.06.2009 in accordance with Hindu rites and rituals. Out of the Wedlock, one male child was born. However, matrimonial dispute ensued between the couple and petitioner No.1 filed a petition under Section 125 Cr.P.C. seeking maintenance of Rs.10,000/- per month for herself and Rs.15,000/- for her minor child i.e. petitioner No.2. The respondent filed a reply and contested the claim made by the petitioners. The learned Additional Sessions Judge, Yamuna Nagar vide order dated 02.08.2018 determined the liability of both petitioner No.1 and respondent and granted interim maintenance allowance of Rs.8,000/- per month in favour of petitioner No.2 (minor son), which was to be paid in the ratio of 60:40 i.e. 60% amount of maintenance was to be paid by respondent-husband and 40% amount was to be paid by wife-petitioner No.1. Aggrieved by the same, all the petitioners have approached this Court by filing the present petitions.

4. Learned counsel for the petitioners relies upon the judgment of Hon'ble Supreme Court in *Sunita Kachwaha and others vs. Anil Kachwaha*

2014(4) RCR (Criminal) 831 and he further places reliance upon the judgment

passed by this Court in *Chanchal Mehta vs. Supriya Mehta* bearing *Crl. Revision No.365 of 2016* decided on 29.01.2016 and submits that merely because the wife is earning and highly qualified cannot be a ground to reject her claim for maintenance.

5. Per contra, learned counsel for respondent submits that the ratio of liability of the husband has been determined not only on the basis of actual income, however, it is the result of some guess work.

6. Having heard the learned counsel for the parties and perusing the record with their able assistance, it transpires that admittedly, petitioner No.1 is working as a Drawing teacher and earning a salary of 30,000/- per month and she has not pressed for maintenance before the learned Sub Divisional Judicial Magistrate, Bilaspur, on the ground that she is a working woman and the maintenance was only awarded to the minor son of petitioner No.1 to the extent of Rs.8,000/-. Both the parties have challenged the impugned order dated 02.08.2018, vide which, the lower Court has determined the liability of Rs.8,000/- as maintenance to petitioner No.2 (minor son) of husband and wife in the ratio of 60:40 respectively i.e. the husband was made liable to pay 60% amount of maintenance and the wife was made liable to pay 40% amount of the maintenance and there is no dispute with regard to the income of the parties. The respondent-husband has produced income tax returns of the relevant time.

7. 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.

8. 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.”

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

10. 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.

11. 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:

"III Criteria for determining quantum of maintenance

(i) The objective of granting interim/permanent alimony is to ensure that the dependant spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse.

There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

82. The factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife. Refer to Jasbir Kaur Sehgal v. District Judge, Dehradun and others (1997) 7 SCC 7. Refer to Vinny Paramvir Parmar v. Paramvir Parmar (2011) 13 SCC 112.

83. In Manish Jain v. Akanksha Jain (2017) 15 SCC 801 this Court held that the financial position of the parents of the applicant-wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the Court should mould the claim for maintenance based on various factors brought before it.

84. On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependant family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into

consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications. Reema Salkan v. Sumer Singh Salkan (2019) 12 SCC 303.

(ii) A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. Chaturbhuj v. Sita Bai (2008) 2 SCC 316.

85. The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

(iii) Section 23 of HAMA provides statutory guidance with respect to the criteria for determining the quantum of maintenance. Sub-section (2) of Section 23 of HAMA provides the following factors which may be taken into consideration : (i) position and status of the parties, (ii) reasonable wants of the claimant, (iii) if the petitioner/claimant is living separately, the justification for the same, (iv) value of the claimant's property and any income derived from such property, (v) income from claimant's own earning or from any other source.

(iv) Section 20(2) of the D.V. Act provides that the monetary relief granted to the aggrieved woman and/or the children must be adequate, fair, reasonable, and consistent with the standard of

living to which the aggrieved woman was accustomed to in her matrimonial home.

(v) The Delhi High Court in Bharat Hedge v. Smt. Saroj Hegde 40 (2007) DLT 16 laid down the following factors to be considered for determining maintenance :

- "1. Status of the parties.*
- 2. Reasonable wants of the claimant.*
- 3. The independent income and property of the claimant.*
- 4. The number of persons, the non-applicant has to maintain.*
- 5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.*
- 6. Non-applicant's liabilities, if any.*
- 7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.*
- 8. Payment capacity of the non-applicant.*
- 9. Some guess work is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.*
- 10. The non-applicant to defray the cost of litigation.*
- 11. The amount awarded under section 125 Cr.PC is adjustable against the amount awarded u/24 of the Act. 17."*

(vi) Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable."

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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 arder 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."

12. 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 for determining the quantum of maintenance. A careful and just balance has been drawn, keeping in view the spiralling inflation rates and high cost of living corresponding to the reasonable needs of petitioner No.2. Learned counsel for the petitioner(s) in all the three cases have not been able to indicate any perversity in the impugned order which warrants interference by this Court. Accordingly, all the three petitions are dismissed being bereft of any merit.

April 15, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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