

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Date of order: 29.04.2024

CRR-F-603-2024(O&M)

Sushil Kumar @ Sushil Kumar Sharma

.....Petitioner(s)

Vs.

Teena & Another

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Suresh Kumar Kaushik, Advocate
for the petitioner.

Nidhi Gupta, J.

Prayer in the present petition is for setting aside order dated 13.03.2024 passed by learned Principal Judge, Family Court, Fatehabad, Camp Court at Tohana, whereby in a petition under Section 125 Cr.P.C., the petitioner/husband has been directed to pay final maintenance of Rs.12,000/- per month to respondent No.1/wife and Rs.6,000/- per month to respondent No.2/minor son, from the date of petition till he attains the age of majority.

2. Learned counsel for the petitioner inter alia submits that the petitioner was married to respondent No.1 on 13.05.2013. One son/respondent No.2 was born out of this wedlock on 14.01.2015. Learned counsel states that the impugned maintenance is on the higher side as the petitioner is working as a Lab Technician and is earning only Rs.75,000/- per month. It is submitted that this was the second marriage of the petitioner and therefore, the petitioner has the additional responsibility of his two

sons from previous marriage, who aged 21 and 15 years, and who are still studying. The petitioner also has to pay an installment of Rs.22,000/- per month towards repayment of home loan, which is deducted from his salary. In these circumstances, grant of Rs.18,000/- per month as final maintenance is on the higher side. It is accordingly, prayed that the impugned order be set aside.

3. No other argument is made on behalf of the petitioner.

4. I have heard learned counsel for the petitioner and perused the case file in great detail.

5. Perusal of record of the case shows that while granting the impugned maintenance, the learned Family Court relied upon judgment of Hon'ble Supreme Court in **"Sunita Kachwaha Vs. Anil Kachwaha" (SC) : Law Finder Doc Id # 629534**, to hold that in a proceeding under Section 125 Cr.P.C., it was not necessary for the Court to go into the minute details of the dispute between the parties. All that Court was required to ascertain was that the wife is unable to maintain herself. On the basis of the evidence led before the learned Family Court, the learned Family Court had determined that at the time of marriage, respondent No.1 was 21 years of age whereas the petitioner was 36 years of age. It was also found that respondent No.1/wife had studied up to 12th grade and was unqualified and the respondents were residing at parental home of respondent No.1 at the mercy of her parents. It was further admitted by the petitioner in evidence that respondent No.2 is studying in school in 1st grade. Accordingly, it was

determined that the respondent no.1 had no source of income, and had therefore been granted the impugned maintenance.

6. Although it was asserted on behalf of the petitioner that respondent No.1 was gainfully occupied as she was a Seamstress and gave tuition to children, however, as the petitioner failed to produce any proof in support of the said assertion on part of the petitioner, the same was rejected by the learned Family Court.

7. It may also be pointed out that it was the respondents' case before the learned Family Court that the petitioner was not just employed as a Lab Technician but also owned shops at Chandigarh and Agroha from where he was getting rental income of Rs.30,000/- per month; and that the petitioner's father owned about 12 acres of land at village Mirchpur, of which the petitioner was getting 1/4th income to the tune of Rs.2 lakh per annum. Thus, the petitioner was getting an income of around Rs.1,55,000/- per month. However, as the respondents failed to lead any evidence regarding the ownership of the petitioner of any agricultural land or shops, the said averments of the respondents were rejected by the learned Family Court.

8. It was in these circumstances that the learned Family Court correctly relied upon judgment of Hon'ble Supreme Court in **"Savitaben Somabhai Bhatiya Vs. State of Gujarat & Others" 2005 (2) RCR (Crl.) 190 (SC)**, to hold that Section 125 Cr.P.C. was enacted for social justice, giving effect to the natural and fundamental duty of a man to

maintain his wife and children so long as they were unable to maintain themselves.

9. Reliance was further placed upon judgment of Hon'ble Supreme Court in '**Chaturbhuj Vs. Sita Bai**' 2008 (1) RCR (Crl.) 163 (SC), wherein it has been held that if the personal income of the wife was insufficient, she could claim maintenance under Section 125 Cr.P.C.

10. Learned Family Court further relied upon judgment of this Court in '**Deepak Cardial Vs. Pinky Yadav**' 2015(7) RCR (Crl.) 632 (P&H), to hold that quantum of maintenance is to be assessed on the basis of facts of each case.

11. Learned Family Court also relied upon judgment of this Court in "**Seema Vs. Gourav Juneja**" 2019 (2) RCR (Crl.) 2019 (P&H), to hold that *"a person could not be permitted to wriggle out of his statutory liability of maintaining wife, minor children etc. by way of availing huge loans and reducing substantial amount of his salary for repayment of same every month. Deductions that were made from gross salary towards long term savings which person would get back at end of his service could be deemed to be asset that person was creating for himself. Such deductions could not be deducted from salary while computing his means to pay maintenance. In arriving at income of party only involuntary deductions like income tax, provident fund contribution etc. were to be excluded."*

12. Accordingly, it was keeping in mind the entire factual matrix of this case as also the evidence brought on record by the parties that the learned Family Court granted maintenance of Rs.12,000/- per

month to respondent No.1/wife and Rs.6,000/- per month to respondent No.2/son.

13. I am in complete concurrence with the view taken by the learned Family Court. I find the impugned order to be just and fair in the facts and circumstances of the case. As such, no ground is made out to interfere in the impugned order. Present petition accordingly, stands **dismissed.**

14. Pending application(s) if any also stand(s) disposed of.

29.04.2024
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No