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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-748-2023 (O&M)
Reserved on: 23.07.2024
Pronounced on: 29.07.2024

Gaurav Arvind Solanki

...Petitioner

Vs.

Mansi Sharma and another

...Respondents

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rahul Sharma, Advocate
for the petitioner.

Mr. Alok Mittal, Advocate
for respondents.

HARPREET SINGH BRAR J.

1. The present revision petition is preferred against impugned order dated 21.02.2023 passed by learned Additional Principal Judge, Family Court, Faridabad, whereby the petitioner has been directed to pay Rs.40,000/- per month to respondent No.1 and Rs. 25,000/- per month to respondent No.2, as maintenance under Section 125 of the Code of Criminal Procedure, 1973 (for short ‘Cr.P.C.’).

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2. The marriage between the petitioner and respondent No.1 was solemnized on 24.11.2012 in accordance with Hindu rites and rituals. Out of this wedlock, one female child i.e. respondent No.2, was born on 18.01.2015. However, marital discord ensued and the respondents filed an application under Section 125 Cr.P.C., wherein she was granted Rs.40,000/- per month while respondent No.2 was granted Rs.25,000/- per month as maintenance by the learned Family Court vide impugned order dated 21.02.2023.

3. Learned counsel for the petitioner, *inter alia*, contended that respondent No.1 is a well qualified lady and holds two degrees i.e. BDS (Bachelor of Dental Surgery) and B.Ed. (Bachelor of Education), as such she is more qualified than the petitioner. Moreover, admittedly, she is running a clinic and giving tuitions, which makes her about Rs.80,000/- per month. Respondent No.2 has also deposited Rs.1,04,23,748/- and had 17 bank accounts from 2014 to 2019. As such respondent No.1 is fully capable of sustaining herself and the learned Family Court has fallen into grave error by awarding such a huge amount in view of the fact that the petitioner had previously worked in Mexico and owns a luxury car, as the same should not have figured in the process of determination of quantum of maintenance.

4. *Per contra*, learned counsel for the respondents submitted that the petitioner owes Rs. 44,25,000/- as arrears of maintenance as he has only paid Rs. 1,25,000/- towards maintenance till date. The petitioner has presented false

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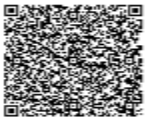


information in his income and assets affidavit by claiming his income to be Rs.50,000/- per month as he runs a chain of hair transplant clinic called Cult Aesthetics. Moreover, he has only produced statement from his account at the Kotak Mahindra Bank and concealed his main account which is at HDFC Bank. Moreover, it is respondent No.1, who is paying the EMIs on their jointly owned flat as well as the school fees of respondent No.2. As such, it is evident that the petitioner is trying to avoid his moral and legal obligation to maintain his wife and minor daughter.

5. Having heard learned counsel for the parties and after perusing the record, it transpires that the respondents are residing in a flat jointly owned by the petitioner and respondent No.1. Admittedly, she is also running her private dental clinic and makes about Rs.18,000/- per month from the same.

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,

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children and parents, which also fall 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.) 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.”

8. 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.”

9. 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

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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.

10. 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

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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

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court as per the provisions of the CPC more particularly Sections 51, 55, 58, 60 r.w. Order XXI."

11. It is evident that respondent No.1 is well qualified and is currently employed and is able to maintain herself. The facts of the case would be squarely covered by the judgments rendered by the Hon’ble Supreme Court in ***Bhushan Kumar Meen vs. Mansi Meen @ Harpreet Kaur (2010) 15 SCC 372*** and ***Anu Kaul vs. Rajeev Kaul (2009) 13 SCC 209*** and the Division Bench of the Delhi High Court in ***X v. Y*** passed in **MAT. APP. (F.C.) 78/2023** decided on 11.10.2023.

13. Accordingly, the present petition is partly allowed to the extent that the amount of Rs.40,000/- awarded to respondent No.1 as maintenance vide impugned order dated 21.02.2023, is set aside, while the amount of Rs.25,000/- awarded to respondent No.2, being the minor daughter of the petitioner, is upheld.

13. All the pending miscellaneous application(s), if any, shall also stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

29.07.2024
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No