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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45638-2017

Reserved on: 23.07.2024

Pronounced on: 26.07.2024

Mohinder Singh

...Petitioner

versus

State of Punjab and others

...Respondents

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. K.S. Kahlon, Advocate
for the petitioner.

Mr. Sunil Chadha, Senior Advocate
with Mr. Paras Chander, Advocate
and Ms. Sonia Monga, Advocate
for respondents No. 2 and 3.

Mr. Rishabh Singla, AAG Punjab.

HARPREET SINGH BRAR J.

1. The present petition has been preferred under Section 482 Code fo Criminal Procedure, 1973 (hereinafter ‘Cr.P.C.’), seeking aside of the impugned order dated 06.09.2016 (Annexure P-6) passed by the learned Chief Judicial Magistrate, Gurdaspur as well as order dated 04.08.2017 (Annexure P-12) passed by the learned Additional Sessions Judge, Gurdaspur, whereby maintenance under Section 125 Cr.P.C. has been granted in the manner elucidated below:

Court	Party	Maintenance granted
Chief Judicial	Respondent No.2-Wife	Rs. 3000/-

Magistrate, Gurdaspur	Respondent No.3- minor son	Rs. 5000/-
Additional Sessions Judge, Gurdaspur	Respondent No.2-Wife	None
	Respondent No.3- minor son	Rs. 10,000/-

2. The marriage between the petitioner and respondent No.2 was solemnized on 03.12.2004 in accordance with Sikh rites and rituals. Out of this wedlock, one male child i.e. respondent No.3, was born on 12.09.2005. Soon after the marriage, respondent No.2 was taunted by the petitioner and his family on account of dowry. Respondent No.2 was thrown out of the matrimonial home in May 2005. After she gave birth to respondent No.3, respondent No.2 was allowed back in the matrimonial home in October, 2005. However, the behavior of the petitioner and his family continued to get worse as they started demanding more dowry as well as an Accent car. When all efforts qua reconciliation failed, FIR No. 261 dated 15.12.2006 under Sections 406, 498-A, 323, 506 IPC was registered against the petitioner and his family at Police Station Tanda. Thereafter respondent No.2 also filed an application under Section 125 Cr.P.C., wherein she was granted Rs. 3000/- per month while respondent No.3 was granted Rs. 5000/- per month as maintenance by the learned trial Court vide order dated 06.09.2012(Annexure P-6). Aggrieved by the same, the petitioner preferred a revision before the learned lower Appellate Court wherein, vide order dated 04.08.2017 (Annexure P-12), the maintenance granted to respondent No.2 was withdrawn and the same qua respondent No.3 was enhanced to Rs. 10,000/- per month.

3. Learned counsel for the petitioner, *inter alia*, contended that respondent No.2 is a well qualified lady and holds two degrees i.e.



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employed in a permanent government job as a teacher. She has concealed her employment status from 2007 to 26.08.2011 and continued to receive Rs. 4500/- per month as interim maintenance for that period. As such, she must contribute towards maintaining their minor son-respondent No.3. Further, the petitioner is earning Rs. 47,000/-, however, he pays Rs. 10,000/- per month to his mother as maintenance under Maintenance and Welfare of Parents and Senior Citizens Act, 2007, as directed by learned Sub Divisional Magistrate, Dasuya vide order dated 25.01.2018(Annexure P-16). Further still, the petitioner commutes 50 km, one way, to reach his place of employment and has considerable expenses qua fuel and car maintenance. Finally, the learned lower Appellate Court had failed to adjust for Rs. 1,40,000/- and Rs. 82,000/- paid by the petitioner by way of demand drafts as well as Rs. 1,00,000/- paid in cash in the Court, towards maintenance.

4. *Per contra*, learned counsel for respondents No.2 and 3 submitted that it was due to the mistreatment meted out to respondent No.2 that she left the company of the petitioner. As a matter of fact, the petitioner had also registered a false FIR bearing No. 97 dated 01.12.2007 under Sections 306, 34 IPC against respondent No.2, wherein she was acquitted. Moreover, the petitioner holds a degree of M.Sc.(Physics) and is in a government job since 05.12.2006. He was made a Lecturer in 2016 and therefore he started getting Rs. 65,000/- per month as salary, therefore, any neglect on his part to maintain respondents No.2 and 3 is unjustified. It is evident that as such he is under a moral and legal obligation to maintain his wife and minor son.

5. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that respondent No.2 is in a permanent government job as a teacher and noting the same, the lower Appellate Court withdrew the amount granted to her as maintenance.



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 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.”

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 (supra)***, 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 respondent No.2 is well qualified and is currently employed in a well paying job. The facts of the case would be squarely covered by the judgments rendered by the Hon'ble Supreme Court in ***Bhushan Kumar***

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. The Courts 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 the high cost of living corresponding to the reasonable needs of respondents No. 3, while maintenance qua respondent No.2 has been withdrawn. Raising a child in today's economy is an expensive affair. The lower Appellate Court has correctly enhanced the compensation qua respondent No.3 to Rs. 10,000/- per month. Moreso, respondent No.2 is already contributing towards maintaining respondent No.3. As such, this Court does not find any perversity in the impugned orders which warrants interference by this Court.

11. Accordingly, the present petition is dismissed being bereft of any merit.
12. Pending miscellaneous application(s), if any, shall also stand disposed of.

26.07.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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