2024:PHHC:168891

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-6281-2015 (O&M)
Reserved on: 05.12.2024
Pronounced on: 16.12.2024

Manju Sharma

... Petitioner

Vs.

Ravinder Kumar Sharma

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Tajender K. Joshi, Advocate
for the petitioner.

Mr. Yogesh Saini, Advocate for
Mr. Suveer Sheokaran, Advocate
for the respondent.

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HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been preferred against the impugned order dated 13.08.2014 (Annexure P-7) passed by learned Additional Sessions Judge, Fast Track Court, Ludhiana, vide which the revision petition against the order dated 04.10.2012 (Annexure P-6) passed by learned Judicial Magistrate Ist Class, Ludhiana, whereby Rs.2,500/- per month was granted to the petitioner as maintenance under Section 125 of the Code of Criminal

Procedure, 1973 (for short 'Cr.P.C.') [*now Section 144 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS')*], was dismissed.

2. The marriage between the petitioner and the respondent was solemnized on 13.04.1998 in accordance with Hindu rites and rituals. Two children were born out of this wedlock, who are currently residing with the respondent. However, matrimonial discord ensued and the petitioner filed a petition for maintenance under Section 125 of Cr.P.C. (*now Section 144 of BNSS*). After assessing all the material available on the record, learned trial Court granted Rs.2,500/- per month to the petitioner as maintenance. Aggrieved by the same, she moved a revision petition before learned Additional Sessions Judge, Fast Track Court, Ludhiana seeking enhancement of the maintenance amount, which was dismissed vide impugned order dated 13.08.2014.

3. Learned counsel for the petitioner, *inter alia,* contends that the petitioner does not have any source of income or own any moveable or immoveable property. The respondent, on the other hand, is working as an Accountant in the office of Accountant General, Haryana. In fact, AW-2 Hargopal, Senior Accountant at the said office, produced the salary certificate of the respondent, which clearly stated that he earns Rs.27,603/- in the month of October, 2011. Learned Court below has unjustly overlooked the amount deposited by the respondent in his GPF etc. account while calculating the

income of the respondent and erroneously calculated his income as Rs.16,254/- per month. Moreover, the respondent was subscribing to a higher contribution towards the provident fund which is Rs.7,000/-, while he is only required to dedicate about 6% of his salary towards the same. He is also paying an installment of Rs.3,000/- per month towards monthly installment for GPF. Further still, the respondent was being paid Rs.15,000/- per month towards school fees of the children from 01.04.2011 to 30.09.2011. The respondent is residing in a government quarter for which Rs.185/- per month is deducted as license fee but he also owns a house in Ambala. Learned counsel places reliance on the judgments rendered by this Court in ***Smt. Savita Aggarwal Vs. R.C. Aggarwal, 1990 CivCC 812*** and ***Vikas Yadav and others Vs. Nirmal Kumar, 2024(4) RCR (Criminal) 831***, the Calcutta High Court in ***Asim Bhattacharya Vs. Smt. Saswati Bhattacharya Chakraborty, 2004 (2) HLR 227*** and the Gujrat High Court in ***Chandrikaben Chanlal Patel Vs. Rameshchandra Chandilal Patela and another, 1986 (1) HLR 426.***

4. Learned counsel for the respondent submits that learned Court below has correctly assessed quantum of maintenance based on the income of the respondent. As such, no interference by this Court is warranted.

5. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the respondent earns a gross salary of Rs.27,603/- per month. Out of the same, Rs.11,649/- is deduced

monthly, leaving his net salary to be Rs.15,954/- per month. However, as far as computing income of the respondent for the purpose of assessing maintenance amount is concerned, accommodations can only be made qua statutorily mandated deductions.

6. Further, it appears that the respondent is contributing Rs.7,000/- per month towards GPF and is also paying an installment of Rs.3,000/- per month towards the same. According to Rule 8(1)(c) of the General Provident Fund (Central Service) Rules, 1960, an employee is required to contribute a minimum of 6% of his salary. Applying the same to the case at hand, the respondent is required to pay a minimum of Rs.1,656.18/- towards GPF, however, he is currently contributing Rs.7,000/- towards the same. This approach begs the inference that the respondent has shown artificial deductions only to reduce the quantum of his net salary and escape the true extent of his liability. Further still, any amount deducted towards GPF is bound to come back to the respondent himself. Therefore, he cannot be allowed to claim the same as a deduction when he is the one to reap benefits of the same, albeit at a later stage.

7. Similarly, any sum paid by the respondent towards repayment of a loan, for instance, Rs.3,000/- repaid towards withdrawal made from the GPF, do not form a part of statutory deductions. Allowing loan installments to be deducted from the gross salary of the respondent would open Pandora's box as

it would allow the husband to wriggle out of his liability by showing exaggerated EMIs or availing more loans. A Co-ordinate bench of the Kerala High Court in ***Surendran K. Vs. Aswin K.S. and others, 2015 (35) R.C.R. (Criminal) 508***, speaking through Justice K.Harilal, opined as follows:

> *"5. What is contemplated under Section 125(1) of the Cr.P.C. is 'sufficient means' only and it means, the 'means' to maintain his wife, children and parents. In the case of a salaried employee, what requires to be taken into account under the expression 'means' is his total earning capacity; that is, the gross income.* ***The salaried employee cannot wriggle out of the statutory liability to pay maintenance allowance by way of availing a huge loan and fixing a substantial amount of his salary as monthly instalments for repayment. Similarly, it cannot be confined to or limited to net salary, which is getting in hand after various deductions such as GPF , Group Insurance Scheme, LIC Premium, State Life Insurance, GPF loan and various other loans. All the above deductions are long term savings and he will get back the same with attractive interest at the end of his service and he may get some portion of such amounts in advance in accordance with concerned Rules. Therefore, such deductions cannot be deducted or excluded from the consideration of his 'means' to pay maintenance allowance****. Put it differently, the term 'means' includes all the savings also. Even if a considerable amount is being deducted toward Provident Fund, General Group Insurance Scheme, LIC Premium, State Life Insurance, GPF loan or any statutory deductions , except income tax or profession tax, that amount cannot be excluded from reckoning sufficient means to pay maintenance allowance to the wife and children or parents. It is for him to control his expenditure and fix the quantum of statutory deduction enabling him to maintain his wife, children and parents, in accordance with their needs, without fail, and he cannot escape from the liability under huge monthly deductions."* (emphasis added)

8. A two Judge bench of the Hon'ble Supreme Court in ***Dr. Kulbhushan Kunwar Vs. Raj Kumari, 1971 AIR SC 234,*** wherein, speaking

through Justice G.K. Mitter, the following was opined:

> *"19. It was further argued before us that the High Court went wrong in allowing maintenance at 25% of the income of the appellant as found by the Income Tax Department in assessment proceedings under the Income Tax Act. It was contended that not only should a deduction be made of income-tax but also of house rent, electricity charges. the expenses for maintaining a car and the contribution out of salary to the provident fund of the appellant.* ***In our view some of these deductions are not allowable for the purpose of assessment of "free income" as envisaged by the Judicial Committee. Income Tax would certainly be deductible and so would contributions to the provident fund which have to be made compulsorily.*** *No deduction is permissible for payment of house rent or electricity charges…"* (emphasis added)

9. Reliance in this regard can also be placed on the judgment rendered by this Court in ***Mukesh Kumar Vs. Rekha Rani and another, 2018(3) RCR (Criminal) 135.***

10. 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 of Cr.P.C. (*now Section 144 of BNSS*) 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. (*now Section 144 of BNSS*) 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. 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."*

11. Reliance can also be placed on the judgment rendered by the Hon'ble Supreme Court in ***Kirtikant D. Vadodaria Vs. State of Gujarat, (1996) 4 SCC 479***.

12. 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.

13. While dealing with the issue of maintenance *in extenso,* a two Judge bench of the Hon'ble Supreme Court in ***Rajnesh Vs. Neha and another, (2021) 2 SCC 324***, speaking through Justice Indu Malhotra, laid down the criteria for determining quantum of maintenance and issued the following directions:

> ***"III Criteria for determining quantum of maintenance***
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> *(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.*
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> *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**.*
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> *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 dependent 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.*
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> *(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/s 24 of the Act."*
> *(vi) Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable."*

14. A perusal of the impugned order passed by the learned Additional Sessions Judge, Fast Track Court, Ludhiana makes it evident that the Court below has erred in assessing the material placed before it for enhancing the amount of maintenance.

15. In view of the discussion above, this Court is of the considered opinion that the payments made towards GPF do not merit deduction during computation of the income of the respondent, for the purpose of granting maintenance to the petitioner. Furthermore, the Hon'ble Supreme Court in

Kalyan Dey Chowdhary Vs. Rita Dey Chowdhary Nee Nandy, AIR 2017 SC 2383 has held that awarding 25% of the husband's salary as maintenance to the wife would be just and proper.

16. Accordingly, the present petition is allowed and the impugned order dated 13.08.2014 is hereby set aside and concerned Family Court, Ludhiana is directed to pass fresh orders qua the quantum of maintenance awarded to the petitioner, in consonance with the observations so made.

17. Needless to say that the respondent is directed to continue to pay the interim maintenance of Rs.2,500/- per month to the petitioner till the fresh order is passed.

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

[HARPREET SINGH BRAR]
JUDGE

16.12.2024
vishnu

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No