



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRR(F)-775-2023 (O&M)
Date of Decision: 18.05.2024

SWATI KALYANIA AND ANR.

....Petitioners

VERSUS

VIKAS KUMAR

....Respondent

CORAM : HON'BLE MRS. JUSTICE MANISHA BATRA

Present : Mr. Tanvir Singh Attariwala, Advocate for the petitioners.

Mr. Karan Singla, Advocate for the respondent.

MANISHA BATRA, J. (Oral)

1. The petitioners by way of the instant petition are seeking modification in the order dated 28.02.2023 passed by the learned Additional Principal Judge, Family Court, Camp Court, Sub Division, Bilaspur, District Yamuna Nagar in case bearing MNT No.125, CIS No.29 of 2021 titled as "*Swati Kalyania and Anr. Vs. Vikas Kumar*" whereby maintenance to the tune of Rs.4000/- per month was directed to be paid to the petitioners by the respondent.

2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned petition under Section 125 of Cr.P.C. has been filed by the petitioners before the learned Family Court, Yamuna Nagar on the averments that the petitioner no.1 got married with the respondent on 26.02.2020 according to Hindu rites and ceremonies. The petitioner no.2 was born out of the wedlock on 08.01.2021. The parents of the petitioner no.1 had spent huge amount of money at the time of her marriage. However, the respondent was not happy with the same and he treated her with cruelty and ultimately she along with petitioner no.1 were thrown out of her nuptial home by the respondent without any reasonable cause. Since April, 2021, she had been living with her



parents. While alleging that she had no source of income to maintain her minor son and herself whereas the respondent was employed as Doctor at Civil Hospital, Yamuna Nagar and was fetching monthly salary of more than Rs.60,000/- per month and also owned ancestral property and was carrying on a business also and his monthly income was Rs.90,000/- per month from all these sources, she prayed for directing him to pay maintenance to the petitioners. Along with the main petition, the petitioners filed an application for grant of interim maintenance. The respondent contested the said application and vide order dated 28.02.2023, the impugned order has been passed.

3. The petitioners are dissatisfied by the order as passed by the learned Family Court, Yamuna Nagar and have filed this petition on the grounds and it is argued by their counsel that the impugned order is liable to be modified as the learned Family Court granted a meagre amount of money by way of an interim maintenance to the present petitioners. It is submitted that the amount of Rs.4000/- per month as directed to be paid to them by the respondent cannot be stated to be sufficient at all firstly keeping in view the fact that the same is not commensurate with the income of the respondent and secondly due to the reason that this amount is not at all sufficient to meet with day to day requirements of food, clothing, medicines etc. of both the petitioners. The petitioner no.2 is now two and half years old and has to be admitted in School and, therefore, expenses are required to be incurred on his education as well. It is also submitted that the petitioner is having three toes in his feet and requires to undergo surgery as per advise given by the doctor and expenses are required to be incurred for that purpose also. While submitting that learned trial Court while passing the impugned order did not take all these points into consideration, it is urged that the impugned order be modified, the amount of Rs.4000/- per month be enhanced and the respondent may be directed to pay interim maintenance at the enhanced rate



i.e. Rs.40,000/- per month to the petitioners.

4. Per contra, it is argued by learned counsel for the petitioner who has put in appearance only today that there is no infirmity in the impugned order, the amount which is directed to be paid to the respondent is just and reasonable and cannot be stated to be exorbitant. It is, therefore, urged that impugned order warrants no inference.

5. I have heard learned counsel for both the parties at considerable length and have gone through the material placed on record.

6. A perusal of impugned order dated 28.02.2023 as passed by learned Family Court, Yamuna Nagar reveals that both the parties had filed their respective affidavits giving details of their income, assets and liabilities. The petitioner no.1 has sworn in her affidavit that she had no income to support herself as well as her minor child whereas the respondent in his affidavit has claimed his monthly income to be Rs.62,902/- by submitting that he was working as Assistant Medical Officer in a Government Hospital on contractual basis. However, he claimed that he did not own any movable or immovable assets.

7. As reflected from the impugned order, the respondent did not dispute relationship between the parties. Though, he is shown to have alleged that the petitioner no.1 had herself left the company of the respondent without any reasonable cause, however, there is nothing on record to show at this stage that the respondent has made any effort to rehabilitate the petitioners with him since April, 2021 when they had allegedly left his company. The parties have levelled allegations/counter allegations against each other. Though, the sanctity and legal effects of these allegations can be determined only on the basis of thorough assessment of the evidence which is yet to be led before the learned Family Court, Yamuna Nagar but at this prefatory juncture, the factors which are to be noticed are that that petitioner no.1 is not earning anything and, therefore, is obviously



unable to maintain herself and her minor child. Admittedly, at the time of passing of the impugned order, the monthly salary of respondent was Rs.62,000/- per month. In “*Rajnish Vs. Neha & Ors:2021 (2) SCC 324*”, the Hon’ble Apex Court had laid down various guidelines for determining the quantum of maintenance by observing that 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. The factors which would weigh with the Court *inter alia* are the status of the parties, reasonable needs of the wife and dependant children; 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 and reasonable costs of litigation for a non working wife. 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, are also required to be taken into consideration. The maintenance awarded to the wife/child should neither be extravagant and not so meagre that it derives them to penury. The sufficiency of quantum has to be adjudged so that wife and child are able to maintain themselves with reasonable comfort.

8. In the instant case, the respondent is admittedly posted as Assistant Medical Officer in a Government Hospital and at the time of passing of the impugned order, he was fetching income of Rs.62,000/- per month. The petitioners on the other hand, are unable to maintain themselves. Though, a plea had been taken that mother of the respondent was dependant upon him, however, at this stage, there is nothing on record to show that the respondent is the only person liable to maintain his mother. The respondent have been directed to be paid an amount of Rs.4000/- per month each by way of an interim maintenance. They



being wife and child of the respectively of the respondent are certainly entitled to be maintained by him with the same comfort and status which they were supposed to be having if living with him. Taking into consideration the day to day expenses of the petitioners of clothing, medicines, lodging, food etc. and further keeping in view the fact that the minor petitioner has to be admitted to School and expenses are likely to be incurred on his education, extra-curricular activities and even on coaching classes, in my opinion, the amount of Rs.4000/- per month which has been directed to be paid as interim maintenance is not sufficient and they need more amount of money for living a life with same comfort and status which is commensurate with the income and status of the respondent.

9. Keeping in view the discussion as made above, the petition is partly allowed and the impugned order is modified and instead of amount of Rs.4000/- per month, an amount of Rs.6000/- per month to each of the petitioners is directed to be paid by the respondent as interim maintenance as in opinion of this Court, the said amount is just reasonable and realistic.

10. The impugned order is accordingly modified.

11. It is however, clarified that observations made herein above shall not be construed as an expression of opinion on the merits of the case.

18.05.2024
Deepak Patwal

(MANISHA BATRA)
JUDGE

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| 1. | <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| 2. | <i>Whether reportable</i> | <i>Yes/No</i> |