



**110 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR(F)-779-2024 (O&M)

Date of decision: 29.05.2024

Archana and others

...Petitioners

versus

Virender Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kanwalvir Singh Kang, Advocate
for the petitioner.

HARPREET SINGH BRAR J. (ORAL)

CRM-24005-2024

This is an application under Section 5 of Limitation Act, 1963 read with Section 482 of Code of Criminal Procedure, 1973 (hereinafter ‘Cr.P.C.’) praying for condonation of delay of 191 days in filing the main revision petition.

For the reasons mentioned in the application, same is allowed and delay of 191 days in filing the main revision petition is condoned.

CRR(F)-779-2024

1. The present revision petition has been preferred against the impugned order dated 10.08.2023 passed by the learned Principal Judge, Family Court, Sonipat under Section 125 of the Cr.P.C. vide which maintenance of Rs. 10,000/- per month each was awarded to petitioners No. 1 and 3 and Rs. 8,000/- per month was awarded to petitioner No. 4, adding up to a total of Rs. 28,000/- per month, while the claim of petitioner No.2 was dismissed.



2. The marriage between petitioner No. 1 and the respondent was solemnised on 14.02.2000 in accordance with Hindu rites and rituals. Out of this wedlock, three children i.e. petitioners No. 2 to 4, were born. However, matrimonial dispute ensued between the couple and the petitioners filed a petition under Section 125 Cr.P.C. seeking maintenance of Rs. 3,00,000/- per month. The respondent filed a reply and contested the claim made by the petitioners. The learned Family Court vide order dated 10.08.2023 granted maintenance of Rs. 10,000/- per month each to petitioners No. 1 and 3 and Rs. 8,000/- per month to petitioner No. 4, adding up to Rs. 28,000/- per month. However, petition seeking maintenance was dismissed qua petitioner No.2. Aggrieved by the same, the petitioners have approached this Court by filing the present petition.

3. Learned counsel for the petitioners *inter alia* contends that learned Family Court has fallen into grave error by awarding a meager amount of Rs. 28,000/- per month to the petitioners, which is not in consonance with the actual income of the respondent-husband. The respondent-husband works as an Assistant in Kendriya Vidyalaya, Behaoli, Samlakha, District Panipat and earns a salary of Rs. 67,311/- per month. Learned counsel further relies upon the photographs annexed as Annexure P-9 to contend that the respondent-husband is owner of a commercial building bearing SCO No. 10, Sector 14, Rohtak, the ground floor of which has been rented out to Nainital Bank, first floor to Sada Yoga Fit and second floor floor to Unique Typing College. As such, he is generating a handsome amount of Rs. 1,50,000/- per month as rental income. Additionally, the respondent owns 10 acres of agricultural land in village Kannonda, Tehsil Bahadurgarh, District Jhajjar, from which he is



making about Rs. 10,00,000/- per annum. The aforesaid averments have been categorically admitted by the respondent in the affidavit filed by him. Thus, the learned Family Court has incorrectly assumed the income of the petitioner to be Rs. 1,00,000/- to Rs. 1,50,000/- per month.

4. Furthermore, petitioner No.2 is an unmarried daughter of the respondent who has completed her graduation in 2023. All the expenses towards her education amounting to Rs. 1,76,814/- were borne by petitioner No.1. Petitioner No.2 is currently learning the fashion designing at Uma Suites for Ladies, Bangalore and petitioner No.1 has spent about Rs. 39,000/- for her training for the months of January and February, 2024. The respondent is duty bound to maintain petitioner No.2 as she is his unmarried daughter in view of ***Jagdish Jugtawat vs. Manju Lata and others 2003(3) R.C.R. (Criminal) 471.*** Learned Family Court has fallen into grave error by dismissing the claim of petitioner No.2 under Section 125 Cr.P.C. by unjustly relying upon judgment of Hon'ble Supreme Court passed in ***Abhilasha vs. Parkash*** in ***Criminal Appeal No. 615 of 2020*** decided on 15.09.2020 as it was passed on a later date. It is settled law that when conflicting judgments have been rendered by two benches of equal strength, the one rendered prior in time will prevail.

5. Finally, since petitioners No. 3 and 4 are school going children and petitioner No.1 has paid Rs. 2,59,400/- and 1,38,480/- towards their tuition fee respectively, however, the learned Family Court has merely awarded Rs. 10,000/- per month to petitioner No. 1 and Rs. 8,000/- per month to petitioners No. 3 and 4 respectively, which does not cover even their educational expenses. Petitioner No.1 neither has an independent source of income, nor does she own any moveable or immoveable properties. She is relying on her parents' savings to



raise her children and support herself. Therefore, the maintenance allowance granted by the learned Family Court vide impugned order deserves to be enhanced.

6. I have heard the learned counsel for the petitioner and perused the record of the case with his able assistance.

7. According to Salmond, a judicial holding can only be treated as a precedent if it relates to a principle of law or the *ratio decidendi*. It must pertain to the opinion formed on a question of law, and not facts, which is necessary for just adjudication of the case at hand. Moreover, while it is trite law that the opinion of a larger bench of the same or, the superior Court shall be binding on that of a bench with a lower strength, recently, the Hon'ble Supreme Court in ***Trimurthi Fragrances (P) Ltd., through its Director Shri Pradeep Kumar Agrawal vs. Government of N.C.T. of Delhi, through its Principal Secretary (Finance) and Others 2022 SCC Online SC 1247*** has clarified that the numeric strength of the concurring Judges in a larger bench would not be relevant in establishing its binding nature over a judgment rendered by a lower strength bench of the same Court.

8. In a conundrum of precedential conflicts in the adjudicatory hierarchy, there is no cavil about settled jurisprudential view that in case of conflicting judgments of co-equal benches, the one having earlier vintage would prevail over the later. A Constitution Bench of the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi (2017) 16 SCC 680***, wherein it was held that in case of conflicting judgments rendered by benches of equal strength, the holding of the judgment rendered prior in time shall prevail. This view has been recently reiterated by the Hon'ble Supreme



Court in *Union Territory of Ladakh and others vs. Jammu and Kashmir National Conference and another* in *Civil Appeal No. 5707 of 2023* decided on 06.09.2023.

9. At the first blush, the argument raised by the learned counsel for the petitioners regarding the predominance of *Jagdish's case(supra)* over *Abhilasha's case(supra)* being of earlier vintage seems ineluctable. However, a closer scrutiny of both the judgments would reveal that there is no conflict in these pronouncements. In *Jagdish's case(supra)*, the applicant-daughter was a minor at the time of filing of the petition under Section 125 Cr.P.C. and attained majority during the pendency of the same. The High Court upheld the order granting a maintenance allowance to her to avoid multiplicity of proceedings, noting that the daughter will face inconvenience filling another petition under Section 20(3) of the Hindu Adoption and Maintenance Act, 1956 to claim maintenance post attainment of majority. However, a three Judge bench of the Hon'ble Supreme Court in *Abhilasha's case(supra)*, the judgment passed in *Jagdish's case(supra)* was considered and it was opined that since the Hon'ble Supreme Court merely refused to interfere in that case owing to the facts and circumstance of the same, no *ratio decidendi* can be culled out of the same. Speaking through Justice Ashok Bhushan, the following was observed:

“36. The purpose and object of Section 125 Cr.P.C., 1973 as noted above is to provide immediate relief to applicant in a summary proceedings, whereas right under Section 20 read with Section 3(b) of Act, 1956 contains larger right, which needs determination by a Civil Court, hence for the larger claims as enshrined under Section 20, the proceedings need to be initiated under Section 20 of the Act and the legislature never contemplated to burden the Magistrate while exercising jurisdiction under



Section 125 Cr.P.C., 1973 to determine the claims contemplated by Act, 1956.”

10. In *Abhilasha’s case(supra)*, the Hon’ble Supreme Court has observed that the judgment rendered in *Jagdish’s case(supra)* cannot be considered as *ratio decidendi*. Moreover, there is no apparent conflict between both the pronouncements as even in *Abhilasha’s case(supra)*, liberty was granted to the applicant-daughter to take recourse to Section 20(3) of the Hindu Adoption and Maintenance Act, 1956 for claiming any maintenance from her father, even after attaining majority. As such, the question of the judgment in *Jagdish’s case(supra)* being contradictory to the holding in *Abhilasha’s case(supra)* does not arise. Thus, what binds this Court is the holding in *Abhilasha’s case(supra)*.

11. Further, it transpires that petitioner No. 1 is a well-educated lady, having qualification of M.A., B.Ed. and L.L.B. Moreover, she also has a Pharmacy license, which she has rented out to another person in lieu of rent of Rs. 4500/- per month, which was later increased to Rs. 7,000/- per month in the year 2021. Further, petitioner No.1 has admitted to being employed as a school teacher to explain recurring monthly credit entries of Rs. 5,000/-. In view of the same, this Court is of the considered view that petitioner No.1 possesses the qualification and potential to earn her livelihood.

12. 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.

13. A two Judge Bench of the Hon'ble Supreme Court in ***Kirtikant D. Vadodaria v. 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.”

14. 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 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 succor to the dependent spouse and 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 must be determined by the yardstick of the dependent spouse being able to lead a life of reasonable comfort.

15. It appears that at the time of filing of the petition under Section 125 Cr.P.C. before the learned Family Court, petitioner No.2 was 19 years old i.e., she had attained majority. Furthermore, petitioner No.2 is still unmarried. Therefore, in view of the provisions contained in Section 125(1)(c) Cr.P.C., the claim for maintenance by daughter, who has attained majority, is admissible only when by reason of any physical or mental abnormality or injury, she is unable to maintain herself.

16. In view of the discussion above, this Court is of the considered opinion that the learned Family Court has duly considered the material placed before it for determining the quantum of maintenance. Petitioner no.1 is well qualified and has the capacity to earn a livelihood to maintain herself and as such no case is made out for enhancement of maintenance allowance granted to her. Reliance in this regard can be placed upon 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 a Division Bench of the Delhi High Court in *X vs. Y* passed in **MAT. APP. (F.C.) 78/2023** decided on 11.10.2023. 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 petitioners No.1, 3 and 4, that would warrant interference by this Court. Further, the learned Family Court has correctly appreciated the prevailing law qua granting maintenance to unmarried major daughters under Section 125 Cr.P.C. As such, interference by



this Court qua dismissal of maintenance claim of petitioner No.2 is not warranted.

17. Accordingly, the present petition is dismissed and the impugned order dated 10.08.2023 passed by the learned Principal Judge, Family Court, is upheld. However, if so advised, petitioner No.2 would be at liberty to take recourse to Section 20(3) of the Hindu Adoption and Maintenance Act, 1956 for claiming any maintenance against her father.

18. Pending miscellaneous application(s), if any, shall also stand disposed of.

May 29, 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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