



IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

251

CRR-F-767-2024(O&M)
Date of order: 10.07.2024

Smt. Shilpa & Another

.....Petitioner(s)

Vs.

Sh. Dinesh Kumar

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sanjay Verma, Advocate
for the petitioners.

Nidhi Gupta, J.

Challenge in the present petition filed by the is to order dated 13.03.2024 passed by learned Principal Judge, Family Court, Palwal, whereby in a proceeding under section 125 CRPC, the petitioners have been granted final maintenance of Rs.5,000/- per month (Rs.2,000/- per month to petitioner No.1/wife and Rs.3,000/- per month to petitioner No.2/minor child).

2. Learned counsel for the petitioners, inter alia, submits that petitioner No.1 was married to the respondent on 17.01.2016. One child/petitioner No.2 was born out of their wedlock on 24.04.2017, who is in the care and custody of petitioner No.1. Due to matrimonial discord, the parties started living separately from 25.05.2017. Learned counsel submits that the final maintenance as granted by the learned Family Court is on the

CRR-F-767-2024(O&M)

lower side as the respondent is an able-bodied person and doing the business of electrical goods and earning more than Rs.40,000/- per month. The respondent is also doing work of property dealing along with his brother-in-law from which he is earning handsome amount. Moreover, father of the respondent is a Central Government employee and mother of the respondent is also a retired Teacher from a private school and is currently earning by giving tuitions. As such, the respondent's family is well-placed. In view of these facts, the petitioners ought to have been granted a higher maintenance as the respondent has no other responsibility except the petitioners. It is stated that as is evident from the table reproduced in Para 6 of the present petition, the petitioners have monthly expenses of Rs.10,500/-. As such, paltry amount of Rs.5,000/- per month is not sufficient to meet the monthly expenses of the petitioners. It is accordingly, prayed that the present petition be allowed and the impugned order dated 13.03.2024 passed by learned Principal Judge, Family Court, Palwal vide which meager amount of maintenance to the tune of Rs.5,000/- has been awarded as maintenance in favour of the petitioners and whereas petitioners are entitled to maintenance to the tune of Rs.30,000/- per month, may be modified.

3. No other argument is made on behalf of the petitioners.

4. I have heard learned counsel for the petitioners and perused the case file in great detail.

5. Perusal of record of the case shows that it was pleaded by the respondent before the learned Family Court that petitioner No.1 had left the matrimonial home without sufficient cause and had therefore, willfully deserted the respondent. Moreover, it was stated that petitioner No.1 is a JBT and getting salary of Rs.15,000/- per month apart from her income of Rs.10,000/- per month by giving coaching and tuitions etc.

6. At this stage, on a Court query, learned counsel for the petitioner has admitted that the petitioner is a Graduate with JBT and also that she was working up to the year 2022. On a Court query as to why petitioner No.1 is not working any longer, learned counsel for the petitioner is unable to give any reply.

7. It has also come on record that although the petitioner is a Graduate with JBT who was working as a Teacher, on the other hand, the respondent is only 12th pass and working as an assistant in a shop in Faridabad from where the respondent is hardly earning Rs.8,000/- per month. Although it is the assertion of the petitioners that the respondent is doing the trade of electrical goods and earning more than Rs.40,000/- per month, however, the petitioners failed to produce any documentary evidence either before the learned Family Court or before this Court in support of their said assertion. The oral testimony of petitioner No.1 was not corroborated by any other independent witness.

8. On the other hand, the respondent had duly placed on record his Affidavit before the learned Family Court wherein he had

depicted his monthly income to be Rs.8,000/-. In support, the respondent had also produced Sh. Om Parkash, RW1 who had admitted in his cross-examination that the respondent is working as a helper in a factory on a salary of Rs.10-12 thousand per month. Nonetheless, the learned Family Court had taken the monthly income of the respondent to be Rs.17-18 thousand per month as per the Deputy Commissioner rates and it was in this background that the impugned maintenance of Rs.5,000/- per month along with litigation expenses of Rs.10,000/- was granted to the petitioners.

9. At this stage, reference may be made to judgment of the Hon'ble Supreme Court in case of **"Bhushan Kumar Meen v. Mansi Meen Allas Harpreet Kaur (SC)" : Law Finder Doc Id # 547724**. In the said case too, the wife albeit well qualified, was not working. Accordingly, the Hon'ble Supreme Court had held that *"However, having regard to qualifications that Wife possesses, there is no reason why she ought not to be in a position to also maintain herself in future..."*, and had accordingly reduced the amount of interim maintenance granted to the respondent wife.

10. Reference may also be made to judgment of the Karnataka High Court in **"Smt. Shilpashree J. M. & Others Vs. Gurumanjunatha A.S. & Others"**, 2023 SCC OnLine Kar 36, Law Finder Doc ID # 2260157, wherein it has been held as under:-

"8. The records also disclosed that before marriage petitioner No.1 was working as is evident from her cross examination. Her cross examination also reveals that she was residing along with her mother. It is also evident from her admission that, even after her

desertion she continued to stay in the rented house along with her mother itself and the allegation does establish that she was not interested to stay with respondent Nos. 2 to 4. It is an admitted fact that at the instance of the present petitioner No. 1, a separate house was taken on rent and now the petitioners i.e., wife and child are residing therein along with her mother, but she was reluctant to stay with her mother-in-law and unmarried sister-in-law. It is an admitted fact that respondent No. 1- husband is running provision stores. Further, he is having responsibility of taking care of his mother and unmarried sister. Admittedly, the petitioner No. 1 was working prior to her marriage and it is asserted that after marriage she resigned the said job. But, there is no explanation as to why she is incapable of working now. She is not supposed to sit idle and seek entire maintenance from her husband and she is also legally bound to make some efforts to meet her livelihood and she can seek only supportive maintenance from her husband".

(Emphasis supplied)

11. In similar circumstances, the High Court of Delhi in “**Anju &Anr. Vs. RinkuDahiya**” Law Finder Doc ID # 2349279, hasheld as under:-

“11. We observe that in the present case, where both the spouses are equally qualified and are earning equally, interim maintenance cannot be granted to the wife under Section 24 of the Act. The object of Section 24 of the Act is to ensure that during the matrimonial proceedings under HMA either party should not be handicapped and suffer any financial disability to litigate only because of paucity of source of income. The provision for interim/pendent lite maintenance has been made only to help either spouse to sail through the litigation expenses and also to ensure that they are able to live com-

*fortably. The proceedings under Section 24 of the Act are not intended to equalize the income of both the spouses or to give an interim maintenance which is commensurate to maintain a similar life style as the other spouse as has been observed by this Court in the case of **K.N. V. R.G MAT. APP.(FC) 93/2018 decided on 12.02.2019.***

12. It is my considered view that it is first and foremost duty of petitioner No.1 to maintain herself, especially keeping in mind, the fact that she is able-bodied and qualified. As such, no ground is made out to enhance the maintenance of ₹5,000/- per month granted to the petitioners. The purpose of Section 125 Cr.P.C. is to protect abandoned wives who are unable to maintain themselves from vagrancy and destitution. A three-Judges Bench of the Hon'ble Supreme Court in "**Vimala (K.) v. Veeraswamy (K.)**" (1991) 2 SCC 375, speaking through Justice Fatima Beevi, held 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..."

13. Again, in "**Kirtikant D. Vadodaria v. State of Gujarat**" (1996) 4 SCC 479, the Hon'ble Supreme Court has 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. The clear purpose of the provision is to grant social justice to a destitute woman, child, or infirm parents. A bare reading of Section 125 Cr.P.C. itself indicates that maintenance is admissible to a wife who is ‘unable to maintain herself’. In the present case that is not so.

15. As such, in view of the factual and legal position, as noticed here in above, no ground is made out to interfere in the impugned order. Present petition accordingly, stands **dismissed**.

16. Pending application(s) if any also stand(s) disposed of.

10.07.2024
Sunena

(Nidhi Gupta)
Judge

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