

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR(F)-1013-2023 (O&M)

Reserved on: 13.03.2024

Date of Decision:- 22.03.2024

BIRENDER

.....Petitioner

Vs.

NEETU AND ANOTHER

.....Respondents

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Rajesh Arora, Advocate,
for the petitioner.Mr. Deepak Vashishth, Advocate,
for the respondents.

HARPREET KAUR JEEWAN, J.

The petitioner has challenged the order dated 01.02.2023 passed by learned Additional Principal Judge, Family Court, Pataudi, by way of filing the present Criminal Revision Petition, whereby the petitioner has been directed to pay an interim maintenance of ₹10,000/- per month to respondent No. 1 (wife) and he has been further directed to keep making payment of ₹8,000/- per month to respondent No. 2 (minor child) [as he is already paying in view of the order passed by the the Protection of Women From Domestic Violence Act, 2005 (for short '*the DV Act*')].

2. Learned counsel for the petitioner *inter alia* contends that the marriage between the petitioner and respondent No. 1 was solemnized on 26.05.2003 and out of the said wedlock one male child (respondent No. 2)

was born. Due to a strained relationship between the petitioner and respondent No. 1-wife, respondent No. 1 started filing false and frivolous cases and she also filed a petition under Section 125 of the Code of Criminal Procedure, 1973 (for short '*the Code*') seeking maintenance from the petitioner.

3. Counsel for the petitioner further contends that while granting interim maintenance to respondent No. 1, the Family Court has failed to consider the fact that the petitioner is working in CRPF, since marriage and has remained posted out of station. The respondents had enjoyed a rental income of ₹20,000/- of another house which was built by the petitioner. The Family Court has also not considered that the petitioner has taken care of the educational and other expenses of both the respondents. Respondent No. 1 is in an illicit relationship and in this regard, the petitioner also got lodged an FIR No. 548/2019, under Section 328 read with Section 34 of the Indian Penal Code, 1860 (for short '*the IPC*'), registered at Police Station Pataudi.

4. It is further contended that the basic salary of the petitioner is ₹42,800/- and his carry home salary is ₹65,000/- approximately and out of the said amount, a sum of ₹25,000/- is being deducted on account of personal loan taken by the petitioner for construction of the house in which the respondents are staying. There are following litigations *inter se* the parties which have not been considered by the Family Court.

Sr. No.	Particulars of cases
1.	FIR No. 548/2019 got registered by respondent No. 1 against the petitioner and his family members.
2.	FIR No. 98/2020 got registered by respondent No. 1

against the petitioner and his family members.

3. FIR No. 99/2020 got registered by the petitioner against the respondents.
4. Two complaints filed under Section 156 (3) Cr.P.C. by the petitioner against the respondents.
5. One complaint under Section 156 (3) Cr.P.C. filed by the father of the petitioner against respondent No. 1 and one police official.
6. Petition under Section 13 of the Hindu Marriage Act, 1955, filed by the petitioner.
7. Petition under Section 125 Cr.P.C. filed by respondents.
8. Appeal filed by respondent No. 1 (Case No. 13/2021).
9. Case filed by respondent No. 1 under the Domestic Violence Act.

5. It is also contended that the respondents have concealed certain material facts from the Family Court and have also not disclosed all the aforesaid litigation. It is contended that the matter may be remanded back to the Family Court for reconsideration.

6. Counsel for the respondents contends that no maintenance has been awarded to respondent No. 2-minor child and the order of grant of maintenance passed in a petition under the Protection of Women From Domestic Violence Act, 2005 has been taken into consideration by the Family Court while passing the impugned order.

7. I have considered the aforesaid contentions.

8. No doubt the petitioner had filed a detailed reply (Annexure P-2) taking a specific plea that respondent No. 1 is in an illicit relationship with Jxxx and denied the claim of the respondents for grant of maintenance. However, the Family Court has only observed that it is a

matter of evidence as to whom is at fault and the same can be decided by way of leading their respective evidences.

9. The petitioner has filed a detailed reply (Annexure P-2) before the Family Court wherein he has made reference of all the litigation *inter se* the parties, registration of the FIR No. 98/2020, registration of FIR No. 98/2020 and the contentions of respondent No. 1 having illicit relationship with Jxxx. These facts have not been noticed by the Family Court while passing the impugned order. As per order dated 08.01.2021 (Annexure P-4) the Sub-Divisional Judicial Magistrate, Pataudi, in a petition under Section 23 of the Act of 2005 has taken a note of various rent agreements *inter se* the tenant and respondent No. 1-wife whereby she is receiving rent from the tenants out of the property. The petitioner has alleged that he is the owner of the said property from which the rent has been received by respondent No. 1-wife. The said order was within the notice of the Family Court since a reference of the same has been given in the impugned order. However, there is no reference in the impugned order regarding the said rental income in the hands of respondent No. 1-wife.

10. It has also been noticed that at the time of passing the impugned order, the Family Court has erred in not obtaining affidavits of assets and liabilities of both the parties as directed by Hon'ble the Apex Court in Rajnesh vs. Neha and another (2021) 2 SCC 324. There is no reference of any such affidavits taken on record and the same being considered by the Family Court at the time of passing of the impugned order.

11. Regarding filing of such 'affidavits' and 'criteria for determining the quantum of maintenance', Hon'ble the Apex Court issued

various directions including the following:-

“In view of the foregoing discussion as contained in Part B - I 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:

XXXX XXXX XXXX XXXX

(b) Payment of Interim Maintenance

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

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.

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.”

XXXX XXXX XXXX XXXX

12. Consequently, the present petition is allowed. The matter is remanded back to the Family Court, Pataudi, for reconsideration on the application for interim maintenance after obtaining the affidavits of the parties of their assets and liabilities in compliance of the directions given

by Hon’ble the Supreme Court in Rajnish’s case (*supra*).

13. Pending miscellaneous applications, if any, also stand disposed of.

March 22, 2024
nitin

(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes/No
Whether Reportable	Yes/No