

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Date of decision: 16th April, 2024

1.

CRR(F)-1013-2022

Rajwinder Kaur and another

...Petitioner(s)

Versus

Harvinder Singh

...Respondent(s)
2.

CRR(F)-586-2022

Harvinder Singh

...Petitioner(s)

Versus

Rajwinder Kaur and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Ms. Manpreet Ghumman, Advocate for the petitioner
in CRR(F)-586-2022 and
for the respondent in CRR(F)-1013-2022.

Mr. D.S. Kahlon, Advocate for the petitioner(s)
in CRR(F)-1013-2022 and
for the respondent in CRR(F)-586-2022.

MANISHA BATRA, J (ORAL):-

This common order shall dispose of the aforementioned two revision petitions as filed against order dated 25.05.2022 passed by the Court of Learned Additional Principal Judge, Patiala Court in MNT petition bearing No. 64/2021 titled as ‘*Rajwinder Kaur and another Vs. Harvinder Singh*’ whereby an application filed by the petitioners Rajwinder Kaur and her son namely Dilpreet Singh for grant of interim maintenance had been

partly allowed and the respondent Harwinder Singh was directed to pay an amount of Rs. 10,000/- per month to the petitioner No.1 and Rs. 5,000/- per month to respondent No.2 by way of interim maintenance.

2. For the sake of continuity and coherence, hereinafter the parties shall be referred to as per their original nomenclature as given in main petition before the Family Court.

3. Brief fact of the case relevant for the purpose of disposal of these petitions are that the petitioners had filed the aforementioned petition under Section 125 of Cr.P.C. pleading therein that the petitioner No.1 was married with the respondent on 16.09.2007. The petitioner No.2 who is their son was born in the year 2009. The respondent was posted in Army. An independent house was got constructed by the respondent over the land which had fallen to his share out of joint family property. The petitioner No.1 had made contributions in construction of the said house by selling her gold ornaments. The behaviour of the respondent had started changing towards the petitioner No.1 since the year 2018 and he had stopped supporting her financially by not giving any money which included even the school fees of minor petitioner No.2. He had not been visiting the matrimonial house of the parties since March, 2019 and had been neglecting and refusing to maintain the petitioners without any sufficient cause. The petitioner No.1 while alleging that she had come to know that he was having some extra marital relationship and submitting that she was unable to maintain herself and her minor child, prayed for directing the respondent to grant maintenance for them. Alongwith the main petition, the petitioners

filed an application for grant of interim maintenance which has been decided vide impugned order dated 25.05.2022.

4. The respondent is shown to have resisted claim of the petitioners in the main petition as well as in the application for claiming interim relief by filing replies and levelling allegations that it was the petitioner No.1 who had not been performing her matrimonial obligations by showing no respect towards him or his family members, by not taking care of his old aged parents and by using filthy language towards him and by harassing and humiliating him. It was submitted that aggrieved by the behaviour of the petitioner No.1, he had decided to get their marriage dissolved under compelling circumstances and had filed a petition for divorce and the petition under Section 125 of Cr.P.C. had been filed as a counter blast. It is also the stand taken by the respondent that the petitioner No.2 had not been allowing him to enter into the house built by him over the land owned by him, with his own money and even by taking loan, though till date, he is making payment of installments of loan and he is living at the mercy of his relatives. Therefore, he prayed for dismissal of the petition as well as application for grant of interim maintenance.

5. Learned trial Court after considering both the sides and taking into consideration, the monthly income of the respondent passed the impugned order thereby directing him to make payment of interim maintenance to the tune of Rs. 20,000/- per month to petitioner No.1 and Rs. 5,000/- to petitioner No.2 during the pendency of the main petition from the date of filing application for grant of maintenance.

6. Both the parties are dissatisfied by the order passed by the learned Family Court and have filed the instant revision petitions. The petitioners are claiming enhancement in the amount of interim maintenance, whereas, the respondent has been making prayer for setting aside the impugned order.

7. Learned counsel for the petitioners has argued that the impugned order is liable to be modified as at the time of filing of the application for grant of interim maintenance till the date of decision of the same, the respondent was earning a sum of Rs. 60,000/- per month. It stands *prima facie* proved on record that it is the respondent who has neglected and refused to maintain the petitioners without any reasonable cause and refused to live with them. It is submitted that the amount of maintenance as directed to be paid to them is meagre, keeping in view the day to day requirements of basic necessities and educational expenses of the minor petitioner No. 2 and is not sufficient and therefore, deserves to be enhanced. Learned counsel for the petitioners, has, therefore, urged for modifying the impugned order and for directing the respondent to pay maintenance to the tune of Rs. 45,000/- per month as interim maintenance.

8. On the other hand, in the petition filed by the respondent, it is submitted and argued by learned counsel for the respondent that he has been discharged from his service w.e.f. 09.12.2023 and now he is receiving pension to the tune of Rs. 23,025/- per month only. In this regard, he has placed on record a copy of order issued by the office of Principal Collector of Defence Account (Pensions). It is further argued that since the petitioners

are living in the house built by the respondent on his own land and do not require any money for lodging and as it is on account of the behaviour of petitioner No.1 herself that he has been compelled to live separately from the petitioners and due to the fact that she is not even allowing him to enter into the house built by him; that his income has been reduced to the tune of Rs. 23,025/- out of which he has to make payments of two EMIs of home loan obtained by him and that he has been even making payments of educational expenses of their son, therefore, it is urged that no amount whatsoever is liable to be paid by him as maintenance to the petitioners. With these broad submissions, learned counsel for the respondent has argued that the impugned order is as such liable to be set aside.

9. I have heard learned counsel for both the parties at considerable length and have given due deliberations to the contentions raised by them.

10. There is no dispute about the fact that the relationship of husband and wife exists between the petitioner No.1 and respondent and the minor petitioner No.2 is their only child. It has also come on record that the parties have been living separately and that petitioner No.1 alongwith her son is living in her matrimonial house. The parties have levelled allegations/ counter allegations against each other with regard to the facts which led them to live separately. Though the sanctity and legal effect of the allegations as levelled by the parties can be determined only on the basis of thorough assessment of the evidence, which is yet to be led by the parties before the learned Family Court, but at this prefatory juncture, the factors to be noticed are that at the time of filing of the petition, the respondent-

husband was admittedly posted in army and was drawing monthly salary at the rate of Rs. 55,000/-. It has come on record that he was depositing two EMIs of home loan to the tune of Rs. 14,000/- per month. It has also come on record that petitioner No.1 is not financially independent and the minor petitioner No.2 obviously is unable to maintain himself. The respondent has claimed that he is not under any obligation to maintain petitioner No.1 especially as she had never been neglected and refused to be maintained by him and it is she who had compelled him to live separately from her. The petitioners have been granted interim maintenance under Section 125 of Cr.P.C. which provides a swift and cheap remedy against any person who neglects or refuses to maintain his wife or children. The prime object of this provision is to prevent starvation and vagrancy and to compel a man to perform the moral obligation which he owes to the society in respect of his wife and children so that they are not left beggared or destituted on the scrapheap of the society and thereby driven to a life of vagrancy, immorality and crime for their subsistence. The powers under this Section are to be exercised with discretion in a judicious manner which is consistent with the language of the statute with regard to the other relevant circumstances. The Hon'ble Supreme Court in an authoritative pronouncement cited as '**Rajnesh vs. Neha, 2021 (2) SCC 324**' has laid down various guidelines for determining the quantum of maintenance by observing that the objective of granting / permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vergancy 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 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. It has also been well settled that 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, 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.

11. Reliance can also be made to ***Manish Jain vs. Akanksha Jain : (2017) 15 SCC 801***, wherein Hon'ble Supreme Court had observed that 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 and the child are able to maintain themselves with reasonable comfort.

12. On applying the above discussed proposition of law to the peculiar facts of the present case, it may be mentioned that at the time of filing of the application for grant of interim maintenance and even till the date of passing the impugned order, the respondent was very much serving as an army personnel and was admittedly drawing monthly salary to the tune of Rs. 60,000/-. Though the petitioners had alleged that he was also drawing income from agricultural resources but no evidence had been produced to prove so at that stage. The respondent might have been discharged from the army services on 31.08.2022 and might have been receiving pension amount only as claimed by him before this Court, though this fact is to be determined on the basis of evidence to be led before the trial court. However, even while considering the same to be correct at this stage, it is nonetheless noteworthy that he was very much into service at the time when the impugned order had been passed. He must have received other financial benefits apart from the pension amount which is being commuted in his favour. Being husband and father of the petitioners respectively, it is his duty to maintain them in a befitting manner and they are entitled to maintain a standard of living which is neither luxiuors nor penurious and is at par with the status of the respondent. His obligation to pay maintenance to his wife as well as child stands at a higher pedestal.

13. Further, apart from alleging that petitioner No.1 along with

petitioner No.2 living in the matrimonial house provided by him, he has brought on record nothing to show that either of the petitioners are capable of maintaining themselves. The learned trial Court after considering the current income of the respondent had directed the respondent to pay interim maintenance to the tune of Rs. 10,000/- and Rs. 5,000/- per month respectively to the petitioners. This amount cannot be stated to be exorbitant or to that extent which can be considered to have become oppressive and unbearable for the respondent nor the same can be considered to be so meagre which might lead to the petitioners to live a life of penury. The learned Family Court while considering the actual income of the respondent, the reasonable expenses as required by himself for his own maintenance as well as payment of EMI etc and while keeping due regard to the standard of the living of the parties as well as high cost of living had directed the respondent to pay the aforementioned amount. The plea taken by respondent that his income has reduced after passing of the impugned order does not absolve him of his duty to maintain the petitioners. The main petition is still pending and he is at liberty to produce evidence to prove change in amount of money earned by him after passing of the impugned order. In view of the discussion as made above, I am of the considered opinion that the prayers made by the petitioners seeking enhancement in the amount of interim maintenance as well as the prayer made by the respondent for setting aside the impugned order does not deserve to be accepted at this stage. The Family Court while taking all facts and circumstances of the case into consideration had passed the impugned order. No illegality or infirmity

can be found in the order so passed. Therefore, the findings so given by the learned Family Court do not warrant any interference by this Court while exercising its revisional powers. Accordingly, both the petitions are dismissed.

14. Photocopy of this order be placed on the file of connected case.

16th April, 2024

Parveen Sharma

1. Whether speaking/ reasoned

2. Whether reportable

[MANISHA BATRA]

JUDGE

:

:

Yes

Yes