



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRR-2180-2018
Reserved on: 20.05.2024
Pronounced on: 24.05.2024

Vijay Kumar

... Petitioner

versus

Jaswinder Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sandeep Arora, Advocate
for the petitioner.

Mr. H.K. Aurora, Advocate
for the respondents.

HARPREET SINGH BRAR, J.

1. The present revision petition has been preferred against the impugned order dated 01.03.2018 passed by the learned Additional Sessions Court, Jalandhar whereby the order dated 05.03.2016 passed by learned Chief Judicial Magistrate (NRI Cases), Jalandhar granting Rs. 8000/- per month to the respondents under Section 125 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was upheld.

2. The marriage between the petitioner and the respondent No.1 was solemnized on 30.12.2007, according to Hindu rites and rituals. This is the second marriage of respondent No.1 as she was previously married to one Jatinder Singh, who passed away on 08.12.2006. Out of that wedlock, two female children (respondents No.2 and 3) were born to her. The petitioner was previously married to the sister of respondent No.1 namely Prem Lata, who passed away on 15.12.2002, leaving behind a male child. However, the

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petitioner resides in U.S.A. along with her biological son. Considering that the petitioner was a widower and respondent No.1 was a widow, he proposed marriage to her, promising that he would treat her daughters as his own. Accordingly, their marriage was solemnized. The petitioner stayed with the respondents at the said house whenever he visited India.

3. After his last visit to India i.e. 08.02.2012 to 15.03.2012, the petitioner stopped sending maintenance to the respondents. Aggrieved by the same, respondent No.1 filed an application under Section 125 Cr.P.C. seeking interim maintenance of Rs. 60,000/- per month. On assessing all the material available on record, the learned trial Court allowed the application and granted maintenance of Rs. 8,000/- per month to the respondents vide order dated 05.03.2021. The petitioner preferred an appeal against the same before the learned lower Appellate Court, which was dismissed vide order dated 01.03.2018.

4. Learned counsel for the petitioner, *inter alia*, contends that the petitioner is the brother-in-law (*jija*) of respondent No.1 and not her husband. He is a permanent resident of the U.S.A., where he resides with his biological son from his first marriage namely Karan. The provisions of Section 125 Cr.P.C. can only be invoked by a legally wedded wife and the petitioner has not solemnized marriage with respondent No.1. As a matter of fact, no ceremony was conducted at the Shiv Mandir, Laroi, as alleged by respondent No.1. Moreover, the petitioner has never cohabitated with respondent No.1 as her husband. The photographs adduced by respondent No.1 before the learned trial Court are from a birthday party and do not reflect performance of any marriage ceremonies. The marriage certificate produced by respondent No.1 is

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a forged and fabricated document. Further, the passport of respondent No.1 reflects the name of her husband as Jatinder Singh. No document is brought on record to indicate that the petitioner has legally adopted respondents No.2 and 3, the daughters of respondent No.1 from her first marriage. Additionally, the respondents are only staying in the said house in Kamal Vihar Colony as a licensee. Furthermore, the petitioner previously worked at a petrol pump in the U.S.A. but is currently unemployed, receiving unemployment allowance from the government. As such, he does not have the means to pay maintenance to the respondents as erroneously granted by the learned Courts below.

5. Learned counsel for the respondents submits that the couple solemnized marriage on 30.12.2007 at Shiv Mandir, Laroi and cohabitated as husband and wife in Mithapur, Jalandhar. Subsequently, the petitioner purchased a house in Kamal Vihar Colony, Chogitti, Jalandhar and moved the respondents there. Further, the name of the petitioner is reflected on various documents of the respondents, including the ration card, Aadhar card and Voter ID. The petitioner abruptly stopped sending maintenance allowance to the respondents when he returned to the U.S.A. on 15.03.2012. Respondent No.1 is a homemaker and does not have an independent source of income while the petitioner is living a luxurious life, running a hotel in New York, which makes him over Rs. 1,50,000/- per month. Therefore, the petitioner is legally bound to maintain the respondents and pay the maintenance as granted by the learned trial Court and upheld by the learned lower Appellate Court.

6. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that no photographs were taken of the marriage ceremony. However, the photographs placed on record reflect

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an intimate relationship between the petitioner and the respondents. Admittedly, the respondents are residing in the house purchased by the petitioner in Kamal Vihar Vihar Colony, Jalandhar. It is also admitted that the petitioner transferred the said house in the name of his sister Vinod Bala vide transfer deed dated 27.11.2012, after the respondents had filed the application under Section 125 Cr.P.C.

7. Further, AW4-Surinder Kaur, a neighbour of the respondents, deposed that she had been visiting the house of the respondents and met the petitioner. She further stated that the petitioner and respondent No.1 were residing together and had presented themselves as husband and wife. Moreover, the documents of respondent No.1, including Aadhar card, Voter ID, reflect the petitioner's name as her husband. Further still, at no point, has the petitioner initiated prosecution under Section 340 Cr.P.C. against respondent No.1 for producing false evidence in Court. The argument qua respondent No.1 being a licensee is also unfounded as the petitioner has not taken any action to address the same like filing a civil suit for mandatory injunction. Lastly, the factum of unemployment of the petitioner is not corroborated by any documentary proof. As such, this Court is of the considered view that the couple maintained a relationship of a domestic nature.

8. This Court is of the opinion that the term 'wife' must be given a wider meaning, in context of Section 125 Cr.P.C. The validity of the marriage cannot be made a ground to deny maintenance to the wife, when the couple has been in prolonged cohabitation of a domestic nature. For the purpose of Section 125 Cr.P.C., the existence of a marriage does not require proof beyond reasonable doubt. The standard of proof applicable in this regard would be



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preponderance of probabilities. The proof of performance of essential ceremonies to solemnize a marriage is not *sine qua non* to claim maintenance under Section 125 Cr.P.C. Reliance in this regard can be placed upon the judgment rendered by this Court in ***Shivdhan vs. Manjeet Kaur*** in ***CRR(F)-530-2024***, decided on 18.04.2024.

9. A two Judge bench of the Hon'ble Supreme Court in ***Chanmuniya vs. Virendra Kumar Singh Kushwaha (2011) 1 SCC 141***, speaking through Justice A.K. Ganguly, opined as follows:

“43. We are thus of the opinion that if the abovementioned monetary relief and compensation can be awarded in cases of live-in relationships under the Act of 2005, they should also be allowed in a proceedings under Section 125 of Criminal Procedure Code It seems to us that the same view is confirmed by Section 26 of the said Act of 2005.

44. We believe that in light of the constant change in social attitudes and values, which have been incorporated into the forward-looking Act of 2005, the same needs to be considered with respect to Section 125 of Criminal Procedure Code and accordingly, a broad interpretation of the same should be taken.

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46. We are of the opinion that a broad and expansive interpretation should be given to the term 'wife' to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a pre-condition for maintenance under Section 125 of the Criminal Procedure Code, so as to fulfil the true spirit and essence of the beneficial provision of maintenance under Section 125.”

Furthermore, a two Judge bench of the Hon'ble Supreme Court in ***Dwarika Parsad Satpathy vs. Bidyut Prava Dixit (1999) 7 SCC 675***, speaking through Justice M.B. Shah, has made the following observations:

“13. Hence, in our view from the evidence which is led if the Magistrate is prima facie satisfied with regard to the performance of marriage in proceedings under Section 125 Criminal



Procedure Code, 1973 which are of summary nature, strict proof of performance of essential rites is not required. Either of the parties aggrieved by the order of maintenance under Section 125, Criminal Procedure Code, 1973 can approach the civil court for declaration of status as the order passed under Section 125 does not finally determine the rights and obligations of the parties.”

10. The Courts must endeavour to realise the purpose behind Section 125 Cr.P.C., which is to provide speedy assistance and social justice to women, children and infirm parents, by being conscious of the practical realities of society. This provision aims to further the cause of social justice and protect dependent women, children and parents, which also falls within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. Reliance in this regard can be placed on ***Vimala (K.) vs. Veeraswamy (K.) (1991) 2 SCC 375*** and ***Kirtikant D. Vadodaria vs. State of Gujarat (1996) 4 SCC 479***. A hypertechnical view in this regard would allow the avoidant partner to twist the law to their benefit and leave the less affluent partner to unjustly suffer. Therefore, making strict proof of marriage a condition precedent for claiming maintenance under the provision of Section 125 Cr.P.C. would be antithetical to the legislative intent behind the same.

11. While dealing with the issue of maintenance *in extenso*, a two Judge Bench of the Hon’ble Supreme Court in ***Rajnesh Vs. Neha and another, (2021) 2 SCC 324*** laid down the criteria for determining quantum of maintenance and issued the following directions:

"III Criteria for determining quantum of maintenance

(i) 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. There is no straitjacket formula for fixing the quantum of



maintenance to be awarded.

82. *The factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependent 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. Refer to **Jasbir Kaur Sehgal v. District Judge, Dehradun and others (1997) 7 SCC 7. Refer to Vinny Paramvir Parmar v. Paramvir Parmar (2011) 13 SCC 112.***

83. *In Manish Jain v. Akanksha Jain (2017) 15 SCC 801, this Court held that the financial position of the parents of the applicant-wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the Court should mould the claim for maintenance based on various factors brought before it.*

84. *On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent 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. **Reema Salkan v. Sumer Singh Salkan (2019) 12 SCC 303.***

(ii) A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of



*the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. **Chaturbhuj v. Sita Bai (2008) 2 SCC 316.***

85. *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 is able to maintain herself with reasonable comfort.*

(iii) Section 23 of HAMA provides statutory guidance with respect to the criteria for determining the quantum of maintenance. Sub-section (2) of Section 23 of HAMA provides the following factors which may be taken into consideration: (i) position and status of the parties, (ii) reasonable wants of the claimant, (iii) if the petitioner/claimant is living separately, the justification for the same, (iv) value of the claimant's property and any income derived from such property, (v) income from claimant's own earning or from any other source.

(iv) Section 20(2) of the D.V. Act provides that the monetary relief granted to the aggrieved woman and/or the children must be adequate, fair, reasonable, and consistent with the standard of living to which the aggrieved woman was accustomed to in her matrimonial home.

*(v) The Delhi High Court in **Bharat Hedge v. Smt. Saroj Hegde 40 (2007) DLT 16** laid down the following factors to be considered for determining maintenance:*

“1. Status of the parties.

2. Reasonable wants of the claimant.

3. The independent income and property of the claimant.

4. The number of persons, the non-applicant has to maintain.

5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.

6. Non-applicant's liabilities, if any.

7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.

8. Payment capacity of the non-applicant.

9. Some guess work is not ruled out while estimating the

income of the non-applicant when all the sources or correct sources are not disclosed.

10. The non-applicant to defray the cost of litigation.

11. The amount awarded under section 125 Cr.PC is adjustable against the amount awarded u/s 24 of the Act.”

(vi) Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable.”

12. In view of the discussion above, this Court finds that the impugned order 01.03.2018 passed by the learned Additional Sessions Court, Jalandhar upholding the order dated 05.03.2016 passed by learned Chief Judicial Magistrate (NRI Cases), Jalandhar, is based on correct appreciation of material available on record. The learned trial Court has drawn a careful and just balance while determining the quantum of maintenance, keeping in view the spiralling inflation rates and high cost of living corresponding to the reasonable needs of the respondents.

13. Learned counsel for the petitioner has not been able to indicate any perversity in the impugned order, which warrants interference by this Court. Accordingly, the present petition is dismissed, being bereft of any merit.

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

Reserved on : 20.05.2024

Pronounced on : 24.05.2024

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(HARPREET SINGH BRAR)

JUDGE

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