



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

214

**CRR(F)-310-2017
Decided on: 20.11.2024**

Meenakshi and Another

... Petitioners

Vs.

Deepak Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Tajveer Singh, Advocate for
Mr. Munish Kumar Garg, Advocate
for the petitioners.
None for the respondent.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been preferred against the impugned judgment dated 05.06.2017 passed by learned District Judge, Family Court, Gurugram, vide which the petition filed by the present petitioners under Section 125 Cr.P.C. was allowed and maintenance of Rs.5,000/- per month was awarded to be paid to the petitioners.

2. The marriage of petitioner No.1 was solemnized with the respondent according to Hindu rites and rituals on 17.01.2023 and they cohabited together. Out of this wedlock, a daughter-petitioner no.2 was born on 28.01.2014, who is currently in the custody of her mother-petitioner no.1. However, matrimonial dispute ensued between the couple and the petitioners filed a petition under Section 125 Cr.P.C. seeking maintenance of Rs.60,000/- per month. The respondent filed a reply and contested the claim made by the

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petitioners. Learned Family Court, vide judgment dated 05.06.2017, granted maintenance allowance of Rs.2,500/- per month in favour of the petitioner no.1 and Rs.2,500/- per month in favour of petitioner no.2. Aggrieved by the same, the petitioners have approached this Court for enhancement of the amount of maintenance, by filing the present petition.

3. Learned counsel for the petitioners, *inter alia*, contends that the amount of maintenance awarded by learned Family Court in favour of the petitioner is too meagre an amount and the same is not in consonance with actual income of the respondent. It is further contended that the learned trial Court erred by not granting any opportunity to the present petitioner(s) to cross-examine the respondent qua the stand taken by him in his reply (Annexure P-1) to petition under Section 125 Cr.P.C. petition or his affidavit of income (Annexure P-10) which is in clear contravention to the provisions of Sections 274 and 296 Cr.P.C. It is also argued that the learned Court below caused grave prejudice by discarding the notification dated 05.04.2017 (Annexure P-12) issued by the Labour Department, Government of NCT Delhi as per which the minimum wage of the respondent should have been assessed at Rs.16,182/- per month for the purpose of awarding maintenance.

4. Having heard learned counsel for the petitioners and after perusing the record with his able assistance, this Court finds no force in the arguments advanced on behalf of the petitioners. At the very outset, what caught the attention of this Court is the Pay Certificate of the respondent-husband attached with the present petition as Annexure P-9. The pay certificate reflects the salary record of the respondent husband for period from

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November 2014 to April 2016. A perusal of the said document reveals that the respondent-husband was employed as a Contractual Conductor and during the aforesaid period, his average monthly gross pay was about Rs.10,000/- per month with some months dipping to Rs.6,000/ and a few peaking at about Rs.13,000/-. Upon taking into consideration this fact, this Court is left with no reservation to hold that monthly income of the respondent-husband has been rightly assessed at Rs.10,000/- by the learned trial Court. It has also come to the fore that the present petitioners failed to adduce any documentary evidence before the learned Court below to support their claim qua the rental income of the respondent-husband or his ownership of any properties. As far as the contention of the present petitioners is concerned that they were not granted any opportunity to cross-examine the respondent-husband qua his reply to the maintenance petition under Section 125 Cr.P.C. or his affidavit tendered therein, the same cannot succeed. Further perusal of the case material shows that the petitioner wife, at no point in time, demanded to cross-examine the respondent husband after he closed his evidence on 17.03.2017 by recording a statement to this effect (Annexure P-10).

5. Furthermore, the impugned order dated 05.06.2017 does not transgress the procedural law merely on the ground that both the parties tendered their evidence on affidavit. Especially, when the petitioner-wife not only stepped into the witness box as PW-1, where she reiterated the averments made in her affidavit, but also examined four other witnesses. Moreover, a Family Court is empowered to lay down its own procedure as envisaged under Section 10 of the Family Courts Act, 1984 (hereinafter referred to as the Act),

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so long as they are not in contravention to the basic tenets of the procedural law. Section 14 of the Act further empowers the Family Court to take a lenient approach in considering the evidence of the parties which may not be otherwise hold any evidentiary value under the Indian Evidence Act, 1872. Both these statutory provisions along with the statement of objects and reasons are being reproduced hereunder to shed some light on the legislative intent behind the 1984 enactment: -

Section 10 of Family Courts Act, 1984 – Procedure generally

(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other.



Section 14 of Family Courts Act, 1984 – Application of Indian Evidence Act, 1872

A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (1 of 1872).

The Statement of objects and reasons for the enactment in question i.e. Family Courts Act, 1984 :

“The Bill, inter alia, seeks to,-

(g) provide that the parties to a dispute before a Family Court shall not be entitled, as of right, to be represented by a legal practitioner. However, the Court may, in the interest of justice, seek assistance of a legal expert as amicus curiae;

(h) simplify the rules of evidence and procedure so as to enable a Family Court to deal effectively with a dispute”

6. It is trite law that a special enactment is to take precedence over the general law when point of discussion is in *pari materia*. The same has been resounded by the Hon’ble Supreme Court in a judgment titled as **Jose Paulo Coutinho vs. Maria Luiza Valentina Pereira & anr., 2019(20) SCC 85**, while making the following observation: -

“29. It is a well settled principle of statutory interpretation that when there is a conflict between the general law and the special law then the special law shall prevail. This principle will apply



with greater force to special law which is also additionally a local law. This judicial principle is based on the latin maxim generalia specialibus non derogant, i.e., general law yields to special law should they operate in the same field on the same subject. Reference may be made to the decision of this Court in R.S. Raghunath vs. State of Karnataka & Ors., (1992) 1 SCC 335, Commercial Tax Officer, Rajasthan v. Binani Cements Ltd. & Ors, (2014) 8 SCC 319 and Atma Ram Properties Pvt. Ltd. vs. The Oriental Insurance Co. Ltd., (2018) 2 SCC 27.”

7. The legislative intent behind these enactments becomes quite clear when seen in light of the above discussion. The genesis of Section 125 Cr.P.C. has been well discussed and it has been reiterated numerous times by the Apex Court of the country that it stands as a measure of social justice. 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 quantum of maintenance must be justifiable and realistic to provide succour to the dependent spouse and also 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 has to be determined by the yardstick of the dependent spouse being able to lead a life of reasonable comfort.

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8. A perusal of the impugned judgment passed by learned Family Court makes it evident that the Court below has duly appreciated the material placed before it for determining the quantum of maintenance, as discussed above. Furthermore, no procedural defect is found to be made by the learned trial Court while passing the same.

9. In the considered opinion of this Court, learned counsel for the petitioners has been unable to indicate any perversity in the impugned judgment which warrants interference by this Court. Accordingly, the present petition is dismissed being bereft of any merit.

10. All the pending miscellaneous application(s), if any, shall also stand disposed of.

20.11.2024
manisha

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No