IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR(F)-856-2024 (O&M) and
CRR(F)-859-2024 (O&M)
Date of decision: 14.10.2024

1.
RICHA THAPAR AND ANOTHER

... PETITIONERS

V/s

GAUTAM THAPAR

...RESPONDENT

2.

GAUTAM THAPAR

...PETITIONER

RICHA THAPAR AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Sumeet Mahajan, Sr. Advocate with
Mr. Saksham Mahajan, Advocate,
Mr. Shrey Sachdeva, Advocate and
Ms. Shruti Singla, Advocate
for the petitioners in CRR(F)-856-2024 and
for respondents in CRR(F)-859-2024.

Mr. Aashish Chopra, Sr. Advocate with
Mr. Vaibhav Sehgal, Advocate and
Ms. Nitika Sharma, Advocate
for the respondent in CRR(F)-856-2024 and
for the petitioner in CRR(F)-859-2024

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SUMEET GOEL, J.

1. Vide this common order, two separate criminal revision petitions, bearing numbers CRR(F) 856 of 2024; and CRR(F) 859 of

2024 filed against, a common order dated 29.05.2024 passed by Additional Principal Judge, Family Court, Ludhiana, in case bearing CIS No.MNT/175 of 2023, are being disposed of.

2. The parties in the present case are referred to as husband and wife, in order to ward off any confusion, while appreciating the facts of the case, in view of the interplay of titles, in both the above-mentioned criminal revisions having been filed against the common order.

3. Facts germane to the adjudication of the present case are that the marriage between the parties was performed on 19.04.2014. Out of their wedlock, a male child was born on 09.04.2015. In view of the differences and disputes having arisen between the husband and wife, the wife filed a petition under Section 125 of the Cr.P.C. in the Family Court, Ludhiana seeking maintenance for herself and the minor son. The Learned Family Court, Ludhiana, vide impugned order dated 29.05.2024, while disposing of the application filed by the wife for grant of interim maintenance, awarded a sum of Rs.30,000/- each to the wife and minor son, to be paid by the husband, as interim maintenance during the pendency of the petition under Section 125 of Cr.P.C.

4. The wife along with the minor son has filed criminal revision petition CRR(F)-856-2024 for enhancement of the interim maintenance so awarded vide the impugned order dated 29.05.2024.

Whereas, the husband has filed CRR(F)-859-2024 for setting aside of the said impugned order.

5. While challenging the legality of the impugned order it has been argued by the learned counsel for husband that the order dated 29.05.2024 passed by the learned Family Court, granting interim maintenance to the wife and minor son, is not sustainable and hence is liable to be set aside on the ground of it being a non-speaking order. Reliance in this regard has been placed on a judgment in the case of ***Kranti Associates Pvt. Ltd. vs. Masood Ahmed Khan, 2010 (9) SCC 496,*** to contend that the impugned order being a non-speaking one is liable to be set aside.

5.1 While placing reliance on the judgments titled as ***Monu Songra vs Pinki, 2016(4) RCR Crl. 804; Smt. Renu Gautam vs. S. Naveen Sharma, 2021(1) CCC 581***, ***S. Rehana Sultana @ Rehana Begum vs B. Mohammed Ghouse, 2017(1) RCR Civil, 551;*** it has been further contended that since the wife has not come to the Court with clean hands hence she is not entitled to any relief of maintenance. It is submitted that the wife is not only guilty of concealment of material facts but also intentionally and with the purpose of playing fraud has deceitfully misrepresented material facts in her affidavit of Assets and Liabilities. It has been contended that in her affidavit, she has deposed that she does not have any FDR in her name, whereas she is having a joint FDR of Rs. 50 lacs; that she has omitted to disclose the fact that she was earning a handsome amount and had an independent source of income of her own. The learned counsel for the husband has pressed into service the Income Tax Returns of the wife to substantiate the argument that she had an income of arround Rs.2.5 lacs per months before her marriage and thereafter, she stop filing Income Tax Returns. Learned counsel has argued that in view of the concealment and deceitful misrepresentation on behalf of wife in her Affidavit of Assets and Disclosure, she ought not to have been granted any maintenance.

5.2 It has been further contended that the Income Tax Returns of the husband for the assessment year 2013-14 should have been read in conjunction with the Income Tax Returns of succeeding years which clearly depict that there has been substantial reduction in the income of the husband. The learned Family Court while deciding the quantum of interim maintenance should have paid regard to the factum of reduced income of the husband. While stressing that the Income Tax Returns ought to have been believed to assess the true income of the husband, reliance on the placed on the judgment in the case of ***Kalyan Dey Chaudhary vs Rita Dey Chaudhary, 2017(2) RCR (Civil) 1033.***

5.3 It is further submitted that the husband resides in a rented accommodation and has to pay the rent amount of Rs.15,000/- per month and has certain other additional expenses also which ought to have been taken into account while fastening the husband with the obligation of such an extravagant maintenance amount.

6. On the contrary, rebutting the arguments advanced on behalf of the husband, it has been argued by the learned counsel for the wife and the minor son that the wife has not withheld any material information in her Affidavit of Assets and Liabilities. Referring to the contents of para No.4 of the original petition filed under Section 125 Cr.P.C., it is argued that the wife has specifically disclosed the factum of possessing an FDR worth Rs.21,00,000/- in her pleadings. It is further submitted that the said FDR is in the joint name of the wife and the husband, and this fact has been admitted by the husband in his criminal revision petition filed before this Court. Learned counsel has submitted that in turn it is the husband who is guilty of concealment of material facts as he has not disclosed the said FDR as his asset in his Affidavit of Assets and Liabilities. It is argued that the TDS qua the interest earned out of the said FDR is deducted by the Bank in the name of the wife as her name figures prior to the husband in the said FDR.

6.1 It is argued that the annual income of the husband is more than Rs.1,00,00,000/- and he has misrepresented his income in the Income Tax Returns filed by him. As per the ITR for the assessment year 2013-14, the gross income of the husband is Rs.30,19,122/- and the total income is Rs.29,17,440/-; that for the years subsequent, the husband has intentionally reduced his Income Tax Returns by routing his business income to the income of his father. This fact can be substantiated by a bare perusal of the Income

Tax Returns filed by the father of the husband, wherein an identical business of auto part manufacturing has been shown to have been operated from premises E-494, Phase-6, Focal Point, Ludhiana. The income of the father of the husband in the year 2014-15 being Rs.8,87,459/- has increased to Rs.28,00,880/- in the year 2022-23. This fact assumes more importance in light of the facts that the husband filed a divorce petition against the wife on 19.11.2015 and even prior to the filing of the divorce petition by the husband, the parents of the husband had filed a civil suit against the wife seeking a mandatory injunction to vacate the building they were residing in.

6.2 The learned counsel for the wife has contended that the assessment of true income of the parties has to be made after taking into account the overall facts and circumstances including the status of the parties, the standard of living they have adopted, the other immovable properties and assets in their name. It is argued that the husband is living in an ultra-luxury residence in Ludhiana, measuring more than 800 sq. yards, though it is in the name of his father. The husband being an industrialist, is running a successful business of manufacturing auto parts, in an industrial unit measuring 1200 sq. yards. Besides this, the husband is running the identical business in the name of his father from another place within Ludhiana itself. It is argued that the summons were served to the husband at the said address and as such it establishes the nexus of the husband with the said business premises also. It is further argued that the family of the husband maintains 5 servants, and also maintains 5 cars i.e. Toyota Corolla Altis, Honda City, Honda IV-Tech, Maruti Suzuki Ciaz, and Tata Harrier. It is argued that the status of the parties can well be judged from the fact that for the honeymoon they went to various European Cities besides a 7-star cruise. It is argued that the minor son of the parties is studying in one of the top schools of Ludhiana namely Kundan Vidya Mandir School.

6.3 With these averments, it is argued that the interim maintenance already granted in favour of the wife and minor son being meager in view of the status of the parties, is entitled to be enhanced. On behalf of the wife judgments in the case of ***Rajnesh vs. Neha and another, (2021) 2 SCC 324; Sita Devi vs Vijay B. Verma, 2014(1) RCR (Civil) 1018; Amit Sharma vs. Meenakshi, 2017(2) RCR (Civil) 875***, are relied upon to contend that the wife is entitled to seek maintenance from husband to live life at par with the standard of living of husband and that where the parties do not come forward with the exact income they have, the court would have no alternative but to apply for its guesswork.

7. I have heard the learned counsel for both the sides and gone through the record of the case carefully.

8. After giving my thoughtful consideration to the rival arguments advanced on behalf of both the parties, I am of the considered opinion that the argument raised on behalf of the husband that the wife has withheld material information from the Court and as

such has not come to the Court with clean hands, disentitling her to seek any relief from the Court is wholly misconceived. A wholesome reading of the pleadings of the wife makes it abundantly clear that she has disclosed about the FDR subsisting in the joint name of the wife and husband, which as per her was gifted to the husband at the occasion of the ring ceremony. As is rightly pointed out on behalf of the wife, this pleading in petition under Section 125 Cr.P.C. has not been specifically denied by the husband in his reply to the said petition. Moreover, the accumulation and appropriation of the interest earned on the FDR in the joint name of the wife and husband, being a factual aspect is to be adjudicated at the time of final adjudication of the petition, on the basis of evidence led by both the parties. The interest earned on the said FDR which is in the joint name of parties, cannot by any stretch of the imagination, be termed as income of the wife enabling her to maintain her as well as the minor son's sustenance on the said amount.

8.1 In ***Monu Songra's*** case (supra) this Court has held as under:

> "*The wife in her petition filed under Section 125 Cr.P.C. did not disclose that she was a Physiotherapist or was earning but in the First Information Report lodged with the police in September 2013 she had mentioned that she was a Physiotherapist (doctor). The information was provided by the complainant. There was no reason for the complainant to mention that. When it has been specifically mentioned it can be assumed that she was a practicing Physiotherapist. The*

husband is posted in Rajasthan. It is not possible for him to collect the information whether she was running a clinic or about her income. The trial Court had noted this and had declined the application for interim maintenance and rightly so. The Revisional Court based on assumptions wrongly allowed maintenance at the interim stage. It should have taken some affidavit from the wife. The wife had to explain how that fact was introduced in the FIR. There was a categoric assertion in the FIR that she was a Physiotherapist, it appears that the wife was hiding facts. She is capable of earning. The trial Court is yet to consider the case on merits. It will have to determine whether a qualified woman who can get a job can sit idle and insist on maintenance. Everyone has to earn for himself or herself or at least make an effort and would not sit idle. See Mamta Jaiswal v. Rajesh Jaiswal, 2001(1) RCR (Civil) 588 : 2000(3) MPLJ 100. The order passed by the Revisional Court is set aside."

8.2 In the case of ***Smt. Renu Gautam*** (supra) Hon'ble Rajasthan High Court held as under:

"*It is pertinent to note that in the application filed, the appellant while disclosing the income of the respondent as Rs. 75,000/- specifically averred that she has no source of income. Admittedly, as on the date the application was preferred by the respondent, she was being paid fellowship by the University Grants Commission as aforesaid and thus, the stand taken by her in the application preferred before the Family Court was false to her knowledge. It is pertinent to note that in the application filed, the respondent had taken the stand at the time of marriage, the respondent disclosed his income as 50,000/- per month whereas he was actually earning while working as Sales Executive in Osram Lighters only a sum of*

> *Rs. 25,000/-. There was no evidence brought on record to establish that the respondent has rented income of Rs. 50,000/- per month. Suffice it to say that there was sufficient material on record to show that appellant had adequate source of income whereas, there was no material placed on record to establish the income of the respondent as claimed. Thus, on the facts and in the circumstances of the case, where the appellant had not approached the Court with clean hands and could not establish the income of the respondent so as to justify the claim of maintenance, in our considered opinion, the Family Court has committed no error in rejecting the application.*"

8.3 In the case of ***S. Rehana Sulthana @ Rehana Begum*** (supra), Hon'ble Telangana and Andhra Pradesh High Court held as under:

> "*As per the recitals of the petition, the petitioner has no means to maintain herself. In the counter, the respondent has taken a specific stand that the petitioner has been working as Hindi Pandit in Vivekananda School, Gooti. To substantiate the stand of respondent, he placed reliance on Ex.R.1 certificate issued by the Head Master of the said school. As per the recitals of Ex.R.1, the petitioner worked as Hindi Pandit from June 2005 to October 2006. The petitioner was having sufficient means to maintain herself as on the date of filing of the petition i.e. 22.08.2006. A person who suppressed material facts is not entitled to claim relief. In the instant case, the petitioner suppressed material facts while filing the petition under Section 125 Cr.P.C. claiming maintenance from the respondent.*"

8.4 I have gone through the ratio decidendi of all the judgments cited on behalf of the husband to contend, that in view of the ratio of law enunciated in these judgments, the wife in the present petition is also not entitled to grant of any maintenance. Perusal of the above-cited judgments relied upon on behalf of the husband clearly shows that the relief of maintenance was denied to petitioners in those cases on the ground of clearly established false averments in their petitions. In all these judgments, the petitioners despite having a definite regular income, sufficient for their sustenance, on the conscious and deliberate false averments, had withheld the said material information. It is based on these acts of impropriety based on falsity on the part of petitioners, the courts came to the conclusion that they have disentitled themselves from the grant of relief of maintenance.

8.5 However, in the present case, as already discussed and held in preceding paras of this judgment, there is no *iota* of any circumstance suggesting a deliberate, conscious and mala fide plea on the part of the wife suppressing the factum of her gainful employment. Admittedly, as per the averments of the husband also, the wife is not working anywhere for her livelihood. Even it is not the case of the husband that she was earlier working somewhere, or has professional competence and capacity to earn her living, so as to maintain herself at par with the standard of living maintained by the husband. Therefore, the ratio of the above-cited judgments, relied upon on behalf of the husband, to contend that the wife has withheld the material information from the court, is not applicable to the facts of the present case.

9. The next judgment relied upon by the husband passed by the Hon'ble Supreme Court in the case of ***M/s Kranti Associates Pvt. Ltd.*** (supra) is again wrongly pressed into the present case. To contend that the impugned order is not sustainable being non-speaking, reference is made to the following part of the judgment passed by the Hon'ble Supreme Court:

> "*51. Summarizing the above discussion, this Court holds :*
> *a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
> *b. A quasi-judicial authority must record reasons in support of its conclusions.*
> *c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
> *d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
> *e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*
> *f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*
> *g. Reasons facilitate the process of judicial review by superior Courts.*

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of instrumentalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya v. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to

Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process"."

9.1 Though this judgment has been strenuously relied upon on behalf of the husband, the same is not applicable to the facts of the present case. Perusal of the impugned order passed by the learned Family Court makes it manifestly clear, that the Family Court while passing the impugned order, has considered the pleadings as well as arguments raised on behalf of both parties, besides appreciating their respective affidavits of assets and other related documents, placed on record of the case. The learned Family Court has gone through the Income Tax Returns and profit and loss account furnished by both the parties to assess their financial status while assessing the interim maintenance. A bare perusal of the impugned order makes it crystal clear that it is a detailed and reasoned order. As such the impugned order cannot be termed as a non-speaking order. I am of the considered opinion that at the time of assessing the interim maintenance, the exercise necessary to be taken by the Court has been done by the learned Family Court while passing the impugned order. At the stage of assessing the interim maintenance the learned

Family Court is not expected to pass the final verdict in the case at the nascent stage of the proceedings.

10. This Court in the case titled ***Vishal Uppal vs Jaspreet Uppal & another, 2024(3) RCR (Criminal) 369*** while dealing with the aspect of subtlety to be adopted at the stage of passing the interim maintenance order held as under:

> "*The finding returned by the learned Family Court at the nascent stage of deciding the interim maintenance, being result of some element of estimation, also cannot be faulted, as the entitlement of the respondent to receive maintenance cannot be based upon exact arithmetical calculations at such a stage. It goes without saying that an order granting interim maintenance is subject to final adjudication on the main petition and the interim maintenance granted during the pendency of the proceedings is only a provisional maintenance subject to final determination to be made on the conclusion of the proceedings.*"

10.1 In the case titled ***Amit Sharma vs Meenakshi*** (supra) as relied upon on behalf of the wife this Court held as under:

> "*Where the parties do not come forward with exact income they have, the Court would have no alternative but to apply its guess-work.*"

11. The judgment passed by the Hon'ble Supreme Court in the case titled ***Kalyan Dey Chowdhury*** (supra) relied upon on behalf of the husband to contend that 25% of the net salary of the husband would be just and proper to be awarded as maintenance to the wife, is again not applicable to the facts of the present case. The present case

arising out of the fixation of interim maintenance, with the final claim of maintenance raised by the wife and minor child, still being pending adjudication before the family court, there being no final figure about the income of the husband available on record, it would be an imprudent endeavour to guess the 25% of the income of the husband at this stage.

12. The pleadings of the parties cannot be rendered entirely otiose while adjudging the amount of interim maintenance, rather they can always be taken into consideration as a guiding factor for the purpose.

13. The averments made by the wife in the petition for grant of maintenance that as per ITR for the assessment year 2013-14 gross income of the husband is Rs.30,19,122/- and total income is Rs.29,17,440/-. Thereafter, the husband in his Income Tax Returns has substantially reduced his income in succeeding years. The husband filed a divorce petition against the wife on 19.11.2015. It is argued that even prior to the filing of the divorce petition by the husband, the parents of the husband had filed a civil suit against the wife seeking a mandatory injunction to vacate the building they were residing in. At this stage, the undervaluation of the Income Tax Returns by the husband cannot be outrightly disbelieved. The routing of the income by the husband to the income of his father in view of the abrupt spurt in Income Tax Returns of the father of the husband during this period also cannot be ruled out altogether. The standard

of living as pointed out, being maintained by the husband in view of the nature of the business activity undertaken by the husband, it can well be considered that the income as depicted in the Income Tax Returns of the husband cannot be construed as the sole basis of adjudicating the quantum of interim maintenance in the present case.

14. The Hon'ble Supreme Court in the case titled as ***Kiran Tomar & Ors versus State of Uttar Pradesh & another, 2023(1) RCR (Criminal) 116*** while dealing with the veracity of Income Tax Returns in assessing the maintenance has held as under :

> "*On the first aspect, it is well-settled that income tax returns do not necessarily furnish an accurate guide of the real income. Particularly, when parties are engaged in a matrimonial conflict, there is a tendency to underestimate income. Hence, it is for the Family Court to determine on a holistic assessment of the evidence what would be the real income of the second respondent so as to enable the appellants to live in a condition commensurate with the status to which they were accustomed during the time when they were staying together*."

14.1 In the judgment, in the case of ***Vijay B. Verma*** (supra), as relied upon on behalf of the wife, this Court held as under:

> "*Section 24 of the Hindu Marriage Act provides for interim maintenance which will have a due consideration of the relative status of parties, reasonable wants of the individual paying capacity of the spouse and extent of resources held by the petitioner claiming maintenance. I must record the fact that status of the parties must be seen as persons belonging to the richer echelons and if she must conduct herself with dignity*

> *as a person she will have to be provided for herself by private transport by a car and must also have a house which depicts her status. The husband after all has the opulence of running a business which is a four star hotel in one of the prominent cities of Punjab. A husband who could extend luxury to visiting guests to his hotel will do well to keep his wife a tad higher in her standard of living.*"

15. Applying the same principle of adjudicating the interim maintenance to the present case it can well be inferred that the learned Family Court while awarding the interim maintenance to the wife and son of Rs.30,000/- each, has clearly fallen short in assessment of the actual earnings of the husband and the standard of living which the wife and son are used to while in the company of the husband. The interim maintenance amount as awarded by the learned Family Court to the wife and son is being inadequate in the facts and circumstances of the case, the interest of justice and equity requires the said amount to be enhanced. As such the quantum of Rs.30,000/- each, as awarded in terms of order passed by the Family Court, as interim maintenance to the wife and son is enhanced to the amount of Rs.50,000/- each to be paid to the wife and minor son by the husband. The litigation expenses of Rs.10,000/- as awarded by the learned Family Court to the wife and minor son, being meager amount, does not serve the interest of justice, as such the litigation expenses of Rs.10,000/- as awarded by the learned Family Court to the wife and minor son is enhanced to Rs.50,000/-.

16. In view of the above findings the criminal revision petition bearing number CRR(F) 859 of 2024 titled ***Gautam Thapar versus Richa Thapar & Anr.***, filed on behalf of the husband is dismissed as being devoid of merit. However, the criminal revision petition bearing number CRR(F) 856 of 2024 titled ***Richa Thapar & another versus Gautam Thapar*** is allowed and the interim maintenance as well as litigation expenses granted to the wife and minor child by the learned Family Court are enhanced in above terms.

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

18. Nothing herein observed shall be construed as an opinion on the merits of the case.

19. Photocopy of this order be placed on the connected file.

(SUMEET GOEL)
JUDGE

October 14, 2024
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No