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210 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-33024-2019(O&M)

Date of Decision: 08.11.2024

LACHMAN SINGH

...Petitioner

Versus

GURJIT KAUR

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rishav Jain, Advocate and
Mr. Shivaly Singla, Advocate
for the petitioner.

Mr. Sanjeev Kumar, Advocate
for the respondent.

Harpreet Singh Brar J.(Oral)

1. Present petition has been filed under Section 482 of Cr.P.C. seeking quashing of order dated 06.05.2019 (Annexure P-1) passed by learned Additional District Judge, Sangrur and order dated 26.04.2017 (Annexure P-3) passed by learned Judicial Magistrate Ist Class, Malerkotla in application under Section 125 of Cr.P.C. seeking maintenance in petition No. 44 of 05.12.2008 titled as "*Gurjit Kaur Vs. Lachman Singh*", vide which petitioner has been directed to pay maintenance of Rs. 6,000/- to respondent-wife.

2. The marriage between the petitioner-husband and respondent-wife was solemnized on 18.11.1985 as per Islamic rites and ceremonies and out of this wedlock one son namely Gurpreet Singh was born. However, matrimonial dispute ensued between the couple and the respondent-wife filed a petition under Section 125 Cr.P.C. seeking maintenance before

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learned Judicial Magistrate Ist Class, Malerkotla. Petitioner-husband contested the claim made by respondent and filed reply to the said petition. Learned Judicial Magistrate Ist Class, Malerkotla, vide order dated 26.04.2017 directed the petitioner-husband to pay maintenance of Rs. 6000/- to respondent-wife and the said order was upheld by learned Additional District Judge, Sangrur vide order dated 06.05.2019. Aggrieved by both the orders, petitioner has preferred this petition.

3. Learned counsel for the petitioner-husband *inter alia* contends learned Court below has gravely erred in awarding maintenance of Rs. 6,000/- per month in favour of respondent-wife as she herself has claimed only Rs. 3500/- per month as maintenance. Learned counsel further contends that petitioner has now retired from the Army and he has got no source of income except the meager amount of pension and as such the amount of maintenance awarded by learned Courts below is exorbitant in nature and not sustainable in the eyes of law. Moreover, the petitioner-husband has now divorced the respondent-wife, therefore, she is not entitled to receive any amount of maintenance from the petitioner-husband.

4. Per contra, learned counsel for the respondent-wife opposes the prayer made by learned counsel for petitioner on the ground that respondent-wife had earlier filed application before the Army authorities, where the petitioner-husband was working earlier, for fixation and payment of maintenance as per Section 91(1) of Army Act read with Section 193 of Army rules and thereafter, the Army authorities had granted the maintenance in favour of respondent-wife @ Rs. 27 1/2 % and respondent-



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wife was in receipt of Rs. 4973/- per month till the retirement of petitioner-husband and respondent-wife is now unable to earn anything for his livelihood.

5. I have heard the learned counsel for the parties and gone through the case file with their able assistance.

6. 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 Courts are required to conduct the maintenance proceedings while being alive to the legislative intent behind the provision under Section 125 Cr.P.C in its true spirit, which is to provide speedy assistance and social justice to women, children and infirm parents. The provisions of Section 125 Cr.P.C. were enacted as a measure to further social justice and protect dependent women, children and parents, which also fall within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India.

7. A three-Judge Bench of the Hon'ble Supreme Court in ***Vimala (K.) v. Veeraswamy (K.) (1991) 2 SCC 375***, speaking through Justice Fatima Beevi, opined that as follows:

“3. Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing, and shelter to the deserted wife.”



A two-Judge Bench of the Hon'ble Supreme Court in *Kirtikant D. Vadodaria v. State of Gujarat (1996) 4 SCC 479*, speaking through Justice Faizan Uddin, opined as follows:

“15. ... While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation.”

8. Another objective the legislature has sought to achieve by this provision is to provide maintenance *pendente lite* to the applicant spouse during proceedings emerging out of matrimonial disputes so that the she/he can maintain herself/himself, have sufficient funds to pursue the litigation, and not suffer at the instance of the affluent spouse.

9. There is a general tendency on the part of the wife to amplify her needs and the husband to conceal his actual income, making it difficult to determine the earning capacity of the rival claimants with exactitude. The rival claimants must scrupulously bring on record their actual respective earning capacities in order for the Court to arrive at quantum of maintenance which is just and fair in terms of principle of equistatus. 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.

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

"VI Final Directions

130. 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:

(a) Issue of overlapping jurisdiction

131. To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that:

(i) where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or setoff, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding:

(ii) it is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding;

(iii) if the order passed in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding

(b) Payment of Interim Maintenance



132. *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

133. *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.*

134. *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.*

(d) Date from which maintenance is to be awarded

135. *We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B-IV above.*

(e) Enforcement/Execution of orders of maintenance

136. *For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1956; Section 20(6) of the D.V. Act; and Section 128 of Cr.P.C may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC more particularly Sections 51, 55, 58, 60 r.w. Order XXI."*

11. Having heard learned counsel for the parties and perusing the record, this Court does not find any merit in the arguments advanced by learned counsel for the petitioner. Perusal of record indicates that learned Court below has concluded that petitioner-husband is not providing any maintenance to respondent-wife after his retirement and thereby he has neglected the respondent by not providing maintenance to her. Moreover, the stand of petitioner that his son is also serving in the military and can

provide maintenance to respondent-wife i.e. his mother, is not tenable as the petitioner cannot escape from his liability to provide maintenance to the respondent-wife, by saying that his son can maintain his mother i.e. the respondent herein. Learned counsel for the petitioner has not been able to indicate any perversity in the impugned order which warrants interference by this Court. Accordingly, this petition is hereby dismissed being bereft of any merit.

12. Pending CRM(s), if any, are also disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

08.11.2024
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No