IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

257 **CRR(F)-812-2022**

Date of decision: 15.10.2024

Vikas Yadav and others

....Petitioners

V/s

Nirmal Kumar

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Ms. Apporva Arya, Advocate for
Mr. J.S. Ghumman, Advocate for the petitioners.

None for the respondent.

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SUMEET GOEL, J. (Oral)

1. The instant revision petition has been preferred against the order dated 27.05.2022 passed by the learned Additional Principal Judge, Family Court, Gurugram (hereinafter to be referred as 'impugned order') praying for modification of the said order and consequently enhancing the quantum of interim maintenance awarded by the said order. Vide the impugned order; the petitioners (herein) have been awarded interim maintenance at the rate of Rs.30,000/- per month (i.e. Rs.20,000/- per month to petitioner No.1-wife and Rs.5,000/- per month each to petitioner Nos.2 and 3 (minor children)) from the date of the filing of the petition. The petitioners (herein) had filed a petition, under Section 125 of Cr.P.C., 1973 before the Family Court, stating that they are the wife and minor children, respectively, of the respondent (herein) and are unable to maintain themselves and hence the interim maintenance ought to be awarded to them.

2. Learned counsel appearing for the petitioners has iterated that the learned Family Court has erred in determining the quantum of interim

maintenance awarded to the petitioners (herein) insofar as the income of the respondent is concerned. According to the learned counsel, the respondent-husband has concealed his true financial standing. It has been further argued that the petitioner No.1-wife alongwith two minor children, has no independent source of income and bears the sole responsibility of caring for the two minor children. It has been further reiterated that the minor son i.e. petitioner No.3 is suffering from Astigmatism-Simple Myopic Astigmatism in eyes, requiring constant medical care and attention. The expenses for the medical treatment of petitioner No.3 (minor son), alongwith other necessities, far exceed the amount of maintenance that has been granted by the Family Court. It is further submitted that the respondent-husband is employed in a multinational company, earning a monthly income of Rs.1.00 lacs. However, as per the affidavit filed by the respondent-husband before the Family Court, under the heading of income and expenditure, he has claimed his monthly expenses to be Rs.81,000/- while simultaneously declaring a monthly income of Rs.75,000/- under the head of income of the respondent-husband. This inconsistency clearly indicates that the respondent-husband declared expenses surpass his reported income, which suggests that the respondent has manipulated his financial disclosure in the affidavit with an intent to minimize the maintenance amount. Learned counsel has submitted that taking into consideration the ever-increasing cost of living, including essential commodities, education, medical expenses and other household needs, the enhancement of the maintenance amount is urgently warranted. Learned counsel has further submitted the recurring costs have escalated significantly due to inflation and increasing living costs, making it impossible for the petitioners to manage on an awarded amount of interim maintenance. Learned counsel has argued that the maintenance amount awarded is insufficient to sustain a decent and respectable living standard for the petitioners and hence the quantum of interim maintenance be modified and enhanced suitably.

3. *Per contra,* learned counsel for the respondent has argued that the Family Court, while granting the interim maintenance to the petitioners, has completely ignored the materials placed on record before it. It has been further argued that the petitioner No.1 has sufficient source of income to maintain herself and the minor children. Hence, dismissal of the instant petition has been prayed for.

4. I have heard learned counsel for the rival parties and have perused the record.

5. It would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court titled as ***Rajnesh vs. Neha & Anr.: 2021(2) SCC 324;*** relevant whereof reads as under:-

> *"**II Payment of interim Maintenance***
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> *(i) The proviso to Section 24 of the HMA (inserted vide Act 49 of 2001 w.e.f. 24.09.2001), and the third proviso to Section 125 Cr.P.C., 1973 (inserted vide Act 50 of 2001 w.e.f. 24.09.2001) provide that the proceedings for interim maintenance, shall as far as possible, be disposed of within 60 days' from the date of service of notice on the contesting spouse. Despite the statutory provisions granting a time-bound period for disposal of proceedings for interim maintenance, we find that application remain pending for several years in most of the cases. The delays are caused by various factors, such as tremendous docket pressure on the Family Courts, repetitive adjournments sought by parties, enormous time taken for completion of pleadings at the interim stage itself, etc. Pendency of*

applications for maintenance at the interim stage for several years defeats the very object of the legislation.

(ii) At present, the issue of interim maintenance is decided on the basis of pleadings, where some amount of guess-work or rough estimation takes place, so as to make a prima facie assessment of the amount to be awarded. It s often seen that both parties submit scanty material, do not disclose the correct details, and suppress vital information, which makes it difficult for the Family Courts to make an objective assessment for grant of interim maintenance. While there is a tendency on the part of the wife to exaggerate her needs, there is a corresponding tendency by the husband to conceal his actual income.

74. It has therefore, become necessary to lay down a procedure to streamline, the proceedings, since a dependant wife, who has no other source of income, has to take recourse to borrowings from her parents/relatives during the interregnum to sustain herself and the minor children, till she begins receiving interim maintenance.

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(j) The concerned Family Court /District Court/Magistrate's Court must make an endeavour to decide the I.A. for Interim Maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.

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132. The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the concerned Family Court/District Court/Magistrate's Court, as the case may be, throughout the country;

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6. Vide the impugned order passed by the Family Court, the aspect of interim maintenance has been decided. It goes without saying that a decision upon the aspect (especially quantum) of interim maintenance, being result of some element of estimation, has to be construed accordingly

as the entitlement of the applicant (making a plea for grant of interim maintenance) cannot be based upon exact arithmetical calculations at such stage. The order granting interim maintenance, indubitably, is subject to final adjudication and it is a provisional step subject to final determination to be made at the conclusion of proceedings. In other words, the interim maintenance is only tentative & is subject to fixation of final maintenance.

7. Indubitably, relationship between the parties is not in dispute. Upon reviewing the affidavit of disclosure of assets and liabilities of the respondent-husband filed before the Family Court, it appears that the monthly income of the respondent-husband is Rs.75,000/- per month. In addition, it has been established that the respondent-husband earns a further sum of Rs.16,000/- per month from other sources of income. Consequently, the total monthly earnings of the respondent-husband amount to Rs.91,000/-. Furthermore, it has been disclosed in the affidavit that the respondent – husband has incurred liabilities in the form of a home loan amounting to Rs.22,50,000/- from ABHFL, along with an additional loan of Rs.5,00,000/- borrowed from private individuals. The corresponding monthly EMI obligations of the respondent-husband are Rs.21,000/- for the loan from ABHFL and Rs.10,000/- from the private loan; totaling a sum of Rs.31,000/- towards loan repayments. In light of the above financial disclosures, it is imperative to note herein that while determining the quantum of maintenance it is not necessary to take into consideration the liabilities of the respondent-husband, which are on account of own volition. In considered opinion of this Court, a fair balance between the respondent's statutory obligations to provide maintenance and his financial capacity, while taking

into account the necessity of safeguarding the rights of the petitioners. At this juncture, it would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court titled as ***Dr. Kulbhushan Kunwar vs. Raj Kumari, 1971 AIR 234;*** relevant whereof reads as under:

> *"19. It was further argued before us that the High Court went wrong in allowing maintenance at 25% of the income of the appellant as found by the Income Tax Department in assessment proceedings under the Income Tax Act. It was contended that not only should a deduction be made of income-tax but also of house rent, electricity charges. the expenses for maintaining a car and the contribution out of salary to the provident fund of the appellant. In our view some of these deductions are not allowable for the purpose of assessment of "free income" as envisaged by the Judicial Committee. Income Tax would certainly be deductible and so would contributions to the provident fund which have to be made compulsorily. No deduction is permissible for payment of house rent or electricity charges. The expenses for maintaining the car for the purpose of appellant's practice as a physician would be deductible only so far as allowed by the income-tax authorities i.e. in case the authorities found that it was necessary for the appellant to maintain a car."*

7.1. Further; the Hon'ble Delhi High Court in the judgment titled as ***Marryamma @ Maryamal vs. Shri Mani: Neutral Citation No.2023:DHC:2411;*** has held as under:

> *"14. In the opinion of this Court, the contention of the learned counsel for respondent that while assessing the income of the respondent, the Court has to consider that he is making payment of more than Rs.10,000/- per month towards EMI of the loan that he has taken towards repair of his house is bereft of any merit since it has been categorically laid down by the Hon'ble Apex Court that only mandatory, statutory deductions are permitted to be deducted for the purpose of assessment of income of the husband. In this regard, reference can be made to the decision of Hon'ble Supreme Court in Jasbir Kaur Sehgal v. Distt. Judge, Dehradun & Ors. (1997) 7 SCC 7 whereby it has been observed as under:-*
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> > *"8. ...No set formula can be laid for fixing the amount of maintenance. It has, in the very nature of things, to depend on the facts and circumstances of each case. Some scope for leverage*

can, however, be always there. The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and ***of those he is obliged under the law and statutory but involuntary payments or deductions****. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case..."*

15. A Co-ordinate Bench of this Court in ***Nitin Sharma v. Sunita Sharma*** *2021 SCC OnLine Del 694 also, after considering several judicial precedents, had observed that only mandatory deductions and compulsory contributions are to be taken into account while ascertaining the amount of maintenance. The relevant observations read as under:*

24. In the opinion of this Court, ***while calculating the quantum of maintenance, the income has to be ascertained keeping in mind that the deductions only towards income tax and compulsory contributions like GPF, EPF etc. are permitted and no deductions towards house rent, electric charges, repayment of loan, LIC payments etc. are permitted.*** *On this aspect, the pertinent observations of Hon'ble Supreme Court in Dr. Kulbhushan Kunwar v. Raj Kumari (1970) 3 SCC 129, which have been followed by a Bench of Punjab & Haryana High Court in Seema v. Gourav Juneja 2018 SCC OnLine P&H 3045, are as under:-*

"12. Section 125 Cr.P.C. stipulates that if any person having sufficient means neglects or refuses to maintain his wife, his legitimate or illegitimate minor child, who are otherwise unable to maintain themselves, shall be obligated to do so. A moral duty and a statutory obligation is cast upon the husband to maintain his wife, minor children, parents who otherwise are not capable of maintaining themselves. ***A person cannot be permitted to wriggle out of his statutory liability by way of availing huge loans and reducing a substantial amount of his salary for repayment of the same every month. Deductions that are made from the gross salary towards long term savings, which a person would get back at the end of his service and such as deductions towards Provident Fund, General Group***

Insurance Scheme, L.I.C. Premium, State Life Insurance can be deemed to be an asset that he is creating for himself. In arriving at the income of a party only involuntary deductions like income tax, provident fund contribution etc. are to be excluded. Therefore, such deductions cannot be deducted or excluded from his salary while computing his "means" to pay maintenance. *In the case of Dr. Kulbhushan Kunwar v. Raj Kumari (1970) 3 SCC 129 : (1970) 3 SCC 129 : AIR 1971 SC 234 while deciding the question of quantum of maintenance to be paid, the argument raised that deduction not only of income-tax but also of house rent, electricity charges, the expenses for maintaining a car and the contribution out of salary to the provident fund of the appellant was not allowed. Only deductions towards income-tax and contributions to provident fund which had to be made compulsorily were allowed. The relevant portion of Dr. Kulbhushan Kunwar's case (supra) reads as under:-*

"19. It was further argued before us that the High Court went wrong in allowing maintenance at 25% of the income of the appellant as found by the Income Tax Department in assessment proceedings NEUTRAL CITATION NO. 2023:DHC:2411 under the Income Tax Act. It was contended that not only should a deduction be made of income-tax but also of house rent, electricity charges, the expenses for maintaining a car and the contribution out of salary to the provident fund of the appellant. In our view some of these deductions are not allowed for the purpose of assessment of "free income" as envisaged by the Judicial Committee. Income Tax would certainly be deductible and so would contributions to the provident fund which have to be made compulsorily. No deduction is permissible for payment of house rent or electricity charges. The expenses for maintaining the car for the purpose of appellant's practice as a physician would be deductible only so far as allowed by the income-tax authorities i.e. in case the authorities found that it was necessary for the appellant to maintain a car."

> *13. In a nutshell, **a husband cannot be allowed to shirk his responsibility of paying maintenance to his wife, minor child, and parents by availing loans and paying EMIs thereon, which would lead to a reduction of his carry home salary."***

8. Keeping in view the principles governing the assessment of quantum of maintenance (whether interim or final) under Section 125 of Cr.P.C., 1973, it is indubitable that the deduction made from the income of the husband, which are on account of own volition of the husband, cannot be permitted. It is only the statutory deductions, which are mandated by law and beyond the control of the husband which can be taken into account. The respondent-husband cannot be allowed to reduce his financial liability towards the maintenance of his spouse or children by resorting to voluntary deductions or expenses that do not have legal compulsion. The primary obligation to maintain the dependents is not diluted through artificial reduction of income.

9. In this view of the matter as also considering the fact that the minor son of the respondent is suffering from Astigmatism-Simple Myopic Astigmatism in eyes, which require constant medical care and attention and the recurring costs that have escalated significantly due to inflation, the present petition is partly allowed and the impugned order dated 27.05.2022 passed by the Family Court is modified to the extent that the respondent (herein)-husband shall pay to petitioner No.2-minor daughter (herein) a sum of Rs.6,000/- per month and Rs.8,000/- per month to petitioner No.3-minor son (herein) from the date of filing of the petition. However, the instant petition *qua* petitioner No.1-wife stands dismissed.

10. Any observations made and/or submissions noted hereinabove shall not have any effect on the merits of the case and the Family Court shall proceed further, in accordance with law, without being influenced therefrom.

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

(SUMEET GOEL)
JUDGE

October 15, 2024
Ajay

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No