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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-1057-2024 (O&M)

Date of decision: 22.08.2024

Shakti Kumar

... Petitioner

Vs.

Prem Lata

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ravi Rana, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

CRM-33071-2024

1. Present application has been filed under Section 5 of the Limitation Act for condonation of delay of 168 days in filing the revision petition.

2. In view of the averments made in the application, same is allowed and delay of 168 days in filing the revision petition is condoned.

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3. The present revision petition has been preferred against the impugned order dated 30.11.2023 passed by learned Principal Judge, Family Court, Pathankot, vide which application filed under Section 127 of the Code



of Criminal Procedure, 1973 (for short 'Cr.P.C.') was allowed and maintenance of Rs.8,000/- per month granted to the respondent was enhanced to Rs.10,000/- per month.

4. The marriage between the petitioner and the respondent was solemnized on 20.01.2017 according to Hindu rites and rituals. However, matrimonial dispute ensued between the couple and the respondent filed an application under Section 125 Cr.P.C. seeking maintenance. The petitioner filed a reply and contested the claim made by the respondent. Learned Family Court, vide order dated 16.01.2019, granted maintenance allowance of Rs.8,000/- per month in favour of the respondent. Thereafter, the respondent filed an application under Section 127 Cr.P.C. seeking enhancement of the amount of maintenance granted vide order dated 16.01.2019 and learned Family Court, vide impugned order dated 30.11.2023, allowed the application under Section 127 Cr.P.C. and enhanced the amount of maintenance from Rs.8,000/- per month to Rs.10,000/- per month. Aggrieved by the same, the petitioner has approached this Court by filing the present petition.

5. Learned counsel for the petitioner, *inter alia*, contends that the respondent has wrongly invoked the provisions of Section 127 Cr.P.C. merely 04 months after passing of final order under Section 125 Cr.P.C., as there was no change in the circumstances. As such, proceedings instituted under Section 127 Cr.P.C. are *non est* and not maintainable. The petitioner is



also shouldering the responsibility of his old-aged parents, who are suffering from various age related ailments. The respondent is well educated and proficient in tailoring and is earning Rs.15,000/- per month.

6. Having heard learned counsel for the petitioner and after perusing the record with his able assistance, this Court finds no force in the arguments advanced on behalf of the petitioner.

7. 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.

8. A three-Judge Bench of the Hon'ble Supreme Court in ***Vimala (K.) Vs. Veeraswamy (K.) (1991) 2 SCC 375***, speaking through Justice Fatima Beevi, opined 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.”

9. Further, a two-Judge Bench of the Hon’ble Supreme Court in ***Kirtikant D. Vadodaria Vs. 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.”

10. 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 she/he can maintain herself/himself, have sufficient funds to pursue the litigation, and not suffer at the instance of the affluent spouse.

11. 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.

12. 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:

"VI Final Directions

130. In view of the foregoing discussion as contained in Part B -1 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."



13. A perusal of the record indicates that gross salary of the petitioner is Rs.58,937/- per month and his carry home salary is Rs.21,508/-. It is trite law that only the statutory deductions are to be excluded at the time of assessment of income. The petitioner is intentionally contributing a sum of Rs.20,000/- per month for AFPP fund. As such, learned Court below has rightly assessed the income of the petitioner and enhanced the maintenance from Rs.8,000/- per month to Rs.10,000/- per month. Further, perusal of the impugned order passed by learned Family Court makes it evident that the Court below has duly considered the material placed before it for determining the quantum of maintenance. A careful and just balance has been drawn, keeping in view the spiralling inflation rates and high cost of living corresponding to the reasonable needs of the respondent. 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. All the pending miscellaneous application(s), if any, shall also stand disposed of.

22.08.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No