



215 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRR(F)-1579-2023 (O&M)
Date of Decision: 11.09.2024

SUKHJIT PAL SINGH

...Petitioner

V/S

AMRITPAL SINGH AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. C.L. Sharma, Advocate
for the petitioner.

Mr. Binat Sharma, Advocate
for the respondents.

HARPREET SINGH BRAR J. (Oral)

1. This petition has been filed by the petitioner challenging the order dated 07.10.2023 whereby, learned Additional Principal Judge, Family Court, Hoshiarpur, has awarded maintenance to the tune of Rs. 12,000/- per month each to the respondents herein, who are children of the present petitioner.
2. Briefly, the facts are that the marriage between petitioner and mother of respondents was solemnized on 01.02.2004 in accordance with Sikh rites and rituals, and two children(respondents) i.e. one son and one daughter, were born out of this wedlock. However, marital discord ensued between between the couple and respondents preferred a petition for maintenance under Section 125 Cr.P.C. which was allowed and maintenance of Rs. 12,000/- per month was awarded to each of the respondents. Aggrieved against the said order, petitioner-father has preferred the present petition.
3. Learned counsel for the petitioner, *inter alia*, contends that petitioner as well as his wife, both are working and it an admitted case that



-2-

petitioner is drawing a salary of Rs. 98,912/- per month, whereas his wife is earning Rs. 92,874/- per month and the maintenance was claimed Rs. 10,000/- per month. However, learned Family Court below fell into grave error by awarding more than the amount sought as Rs. 12,000/- per month each has awarded to both the respondents, which is beyond the pleadings and prayer made in the petition filed under Section 125 of Cr.P.C. Learned counsel further submits that the petitioner is not liable to pay any maintenance to respondent No.1 in view of Section 125(1)(c) Cr.P.C, as he is able bodied and has attained majority during the pendency of present petition. Moreover, it is trite law that if both the husband and the wife are earning, then they are both liable to maintain their children and the husband alone cannot be be burdened to maintain them.

4. *Per contra*, learned counsel for respondents submits that the mother of the respondents was turned out of the matrimonial home along with the respondents. However, till date, the petitioner has not paid even a single penny to the respondents as maintenance. The mother of the respondents has availed a loan in order to purchase a house and currently, she is paying an EMI of Rs. 12,000/- towards the same. Both the respondents are also suffering from various ailments, for which they require regular treatment. As such, the petitioner is legally and morally bound to maintain them.

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

6. 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



-3-

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.) vs. 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 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.”

8. While dealing with the issue of maintenance *in extenso*, a two Judge bench of the Hon'ble Supreme Court in ***Rajnish 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 -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



-5-

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 arder 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."*

9. A perusal of the record indicates that the mother of the respondents namely Kulwinder Kaur has been residing separately from the petitioner since November, 2017. The respondents have been staying with their mother since then, therefore, it is understood that she must be incurring certain expenditure towards their upbringing. Admittedly, Kulwinder Kaur is in government service and draws a salary of Rs. 92,874/- per month. However, only the petitioner has been directed to pay maintenance to the respondents.

10. Consequently, the present petition is disposed of in the following terms:

- (i) Since respondent No.1 is able bodied and has attained majority, he shall no longer be entitled to any maintenance under Section 125 Cr.P.C.
- (ii) The maintenance of Rs. 12,000/- per month awarded to respondent No.2 is hereby reduced to Rs. 10,000/- per month.

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

(HARPREET SINGH BRAR)
JUDGE

11.09.2024
Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No