



**CRR(F)-507-2021
& 01 more case**

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under Section 125 of the Cr.P.C., vide which, the maintenance of Rs.25,000/- per month was awarded to the respondents (Rs.20,000/- to respondent No.1 and Rs.5,000/- to respondent No.2), wife and son of the petitioner.

3. The marriage between the petitioner and respondent No.1 was solemnized on 02.12.2014 in accordance with Hindu rites and rituals at Faridabad. Out of the wedlock, one male child was born. However, matrimonial dispute ensued between the couple and the respondents filed a petition under Section 125 Cr.P.C. seeking maintenance. The petitioner filed a reply and contested the claim made by the respondents. The learned Family Court vide order dated 09.08.2021 granted maintenance allowance of Rs.25,000/- per month in favour of the respondents. Aggrieved by the same, the petitioner and respondents have approached this Court by filing the present petitions.

4. Learned counsel for the petitioner *inter alia* contends that learned Family Court has fell into grave error by awarding the maintenance to the respondents. Learned counsel submits that respondent No.1 along with the child (respondent No.2 herein) had left the matrimonial home by her own will. Respondent No.2 is well qualified lady having experience of service as Sales Executive in Hindustan Times, where she was getting handsome salary. Furthermore, old age parents of the petitioner are dependent upon him and he has also availed a loan of Rs.15,00,000/-, for which, EMI is being deducted from his salary.

5. *Per contra*, learned counsel for the respondents submits that respondent No.1 has no independent source of income and the petitioner is serving in Airport Authority of India from where, he is earning approximately Rs.15,00,000/- annually. Furthermore, petitioner is also having investment in



property and he has no other responsibility.

6. I have heard the learned counsel for the parties and perused the record with their able assistance.

7. Pertinently, 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 falls 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.) 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.”

9. However, 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 ***Rajnish 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 -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."

11. A perusal of the impugned order passed by the learned Family Court makes it evident that the Court below has duly considered the material placed before it for determining the quantum of maintenance. Learned Family Court has rightly observed that admittedly, the petitioner is doing job in Airport Authority of India, Ministry of Civil Aviation and earning Rs.77,579/- per month and as per the settled law only statutory deductions are to be excluded from the actual income of the husband. Any EMI for the loans taken by him cannot be excluded for the purpose of assessing his actual income. Respondent No.1 is legally wedded wife of the petitioner and she has no independent source of income and the petitioner is duty bound to maintain the respondents.

12. It is further significant to note that petitioner has liability towards repayment of loan is not material as per decision of our Hon'ble High Court in

Mukesh Kumar vs. Rekha Rani and another, 2018(3) RCR (Criminal) 135



wherein, it was held that “*a person cannot be permitted to wriggle out of his statutory liability by way of availing huge loans and reducing the substantial amount of salary for repayment of the same every month.*”

13. 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 respondents and the conduct of the petitioner-husband and the fact that respondent no.2-minor son is residing with respondent no.1. Learned counsel for the respective petitioners, in both the cases have not been able to indicate any perversity in the impugned order which warrants interference by this Court. Accordingly, both the petitions are dismissed being bereft of any merit.

14. Pending miscellaneous applications, if any, shall stand disposed of accordingly.

Reserved on : 20.08.2024
Pronounced on : 22.08.2024
manisha

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No