



108 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR(F)-1162-2024 (O&M)
Date of decision: 11.09.2024

Rajwinder Kaur alias Rajvinder Kaur and another Petitioners

Versus

Jaswant Singh ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Karandeep Singh Sidhu, Advocate
for the petitioners.

HARPREET SINGH BRAR, J. (ORAL)

CRM-36505-2024

This is an application under Section 5 of the Limitation Act read with Section 528 of BNSS, 2023 seeking condonation of delay of 128 days in filing the present revision petition.

For the reasons mentioned in the application, the same is allowed and the delay of 128 days in filing the present revision petition is hereby condoned.

CRR(F)-1162-2024

1. The present petition has been preferred against the impugned order dated 31.01.2024 passed by the learned Family Court, Guruharsahai, District Ferozepur under Section 127 (1) of the Cr.P.C. vide which the application for enhancement of monthly interim maintenance has been dismissed being not maintainable.

2. The marriage between petitioner No.1 and the respondent was solemnised in the year 2013 in accordance with Sikh rites and rituals. Out of

**CRR(F)-1162-2024 (O&M)****-2-**

this wedlock, one male child was born. However, matrimonial dispute ensued between the couple and the petitioners filed a petition under Section 125 Cr.P.C. seeking maintenance. The respondent filed a reply and contested the claim made by the petitioners. The learned Family Court vide order dated 05.01.2022 granted ad-interim maintenance allowance of Rs.10,000/- per month in favour of the petitioners (Rs.6,000/- per month to petitioner No.1 and Rs.4,000/- per month to petitioner No.2). Thereafter, the petitioners approached this Court against the said order dated 05.01.2022, however, the same was withdrawn with liberty to avail alternate remedies vide order dated 18.10.2023 (Annexure P-8) and therefore, the petitioners had approached the learned Family Court at Guruharsahai, District Ferozepur under Section 127 (1) of Cr.P.C. which was dismissed being not maintainable. Aggrieved by the same, the petitioners have approached this Court by filing the present petition.

3. Learned counsel for the petitioners *inter alia* contends that petitioner No.1 has no source of income and petitioner No.2 is a school going kid studying in 5th standard and is also taking tuitions. The respondent is working in Punjab Police and is also owner of some agricultural land, as such, the interim maintenance awarded by the learned Family Court is not in consonance with the actual income of the respondent as only Rs.10,000/- per month was granted as interim maintenance.

4. 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.

5. 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.”



6. 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.

7. 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.

8. 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 -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



CRR(F)-1162-2024 (O&M)

-6-

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. In view of the above, this Court finds no force in the arguments advanced by learned counsel for the petitioner. At this stage, only interim maintenance is granted to the parties and the parties are yet to prove their respective claims by adducing evidence.

10. Having heard learned counsel for the petitioners and after perusing the record of the case, it transpires that even if the respondent is drawing a salary of Rs.72,000/- per month, the interim maintenance can be enhanced according to the evidence lead by the parties and it is 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 petitioners. Learned counsel for the petitioners 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.

Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

11.09.2024
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No