



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

120 (2)

CRM-M-50630-2022

Date of decision: 27.08.2024

Sushma and another

...Petitioners

V/s

Dinesh Kumar

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Devender Arya, Advocate for the petitioners.

Ms. Manita Dalla, Advocate for

Ms. Madhur Jangra, Advocate for the respondent.

SUMEET GOEL, J. (Oral)

1. The instant petition is directed against the order dated 07.10.2021 passed by Additional Sessions Judge, Charkhi Dadri, Haryana whereby the revision petition filed by the petitioner-wife (herein) against the order dated 19.01.2021 passed by Judicial Magistrate Ist Class, Charkhi Dadri, was allowed as follows:

“12. Thus, this Court finds manifest error or illegality on the face of the impugned order to interfere in the same in the present revision petition. So, the revision petition in hand is hereby accepted and allowed and the impugned order dated 19.01.2021 stands reversed and set aside. Consequently, the interim maintenance application of revisionists-petitioners stands allowed by granting Rs.15000/- per month to revisionist-petitioner No.1 and Rs.10,000/- per month to revisionist-petitioner No.2. The said amount of interim maintenance shall be payable from the date of application for interim maintenance. Record of the Court of learned Trial Court be sent back along-with a copy of order of this Court. After due compliance, file of present revision petition be consigned to the records.”

2. Learned counsel for the petitioners has argued that the quantum of maintenance assessed by the Court below is on the lower side and the



same deserves to be enhanced suitably. Learned counsel has further argued that the respondent is serving as Commandant in BSF and is earning handsomely from the said job. Moreover, the respondent also owns shops at Rohtak road, Charkhi Dadri and is getting rent of Rs.25.00 lacs besides having agricultural land in his name. It is, thus, pleaded that the quantum of maintenance awarded by the learned Court below is on the lower side.

3. *Per contra*, learned counsel for the respondent submits that the learned Court below has determined the quantum of maintenance based on the calculation of the income of the respondent. Learned counsel further submits that the respondent is incurring all the expenses of the petitioner-wife as well as their children on their upbringing. According to him, the petitioner-wife (herein) has sufficient source of income and does not need any maintenance. Thus, it has been prayed that the present petition be dismissed.

4. I have heard counsel for the parties and have gone through the available records of the case.

5. The facts of the instant case reflect that the petitioner-wife had filed a petition under Section 125 of Cr.P.C. before JMIC, Charkhi Dadri for grant of interim maintenance. After considering the rival contentions of both the parties, the learned JMIC, Charkhi Dadri, vide order dated 19.01.2021, dismissed the application for grant of interim maintenance. Aggrieved, the petitioner-wife (herein) filed a revision petition before the Additional Sessions Judge, Charkhi Dadri. Vide impugned order, the same was accepted and the order passed by JMIC, Charkhi Dadri was set-aside and petitioner No.1 was granted interim maintenance to the tune of Rs.15,000/-



month as interim maintenance from the date of applicaiton. During the course of hearing, it has transpired that the impugned judgment has been passed by the learned Court below without seeking, from the rival parties, the affidavit(s) of assets and liabilities in terms of the judgment of the Hon'ble Supreme Court in ***Rajnesh vs. Neha, 2021(2) SCC 324***.

6. It would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court in ***Aditi @ Mithi vs. Jitesh Sharma, 2023 INSC 981***; relevant whereof reads as under:-

“8. The manner in which maintenance payable under Section 24 of the Hindu Mariage Act, 1955 or Section 125 Cr.P.C. is to be assessed, was considered by this Court in its celebrated judgment in Rajnesh v. Neha and Another, (2021) 2 SCC 324. Detailed guidelines were issued. It was noticed that the terms of maintenance are decided on the basis of pleadings of parties and on the basis of some amount of guess work. It is often seen that both the parties submit scanty material and do not disclose correct details. The tendency of the wife is to exaggerate her needs, whereas the husband tends to conceal his actual income. Keeping that in view, this Court laid down the procedure to streamline grant of maintenance. The judgments of various courts were referred to and response from various State Legal Services Authorities was sought. This Court even requested the National Legal Services Authority to submit a report on the suggestions received from the State Legal Services Authorities for framing guidelines on the affidavit of disclosure of assets and liabilities to be filed by the parties. Guidelines were issued in exercise of powers under Article 136 read with Article 142 of the Constitution of India, prescribing a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings. The judgment was delivered on 04.11.2020. The affidavit was to be submitted in all maintenance proceedings including pending proceedings. The directions given are extracted as under:

“72. Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers under Article 136 read with Article 142 of the Constitution of India:



72.1. (a) *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 Family Court/District Court/Magistrate's Court concerned, as the case may be, throughout the country;*

72.2. (b) *The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;*

72.3. (c) *The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks. The courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent. If the respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for this purpose, the court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings [Kaushalya v. Mukesh Jain, (2020) 17 SCC 822 : 2019 SCC OnLine SC 1915] . On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on the basis of the affidavit filed by the applicant and the pleadings on record;*

72.4. (d) *The above format may be modified by the court concerned, if the exigencies of a case require the same. It would be left to the judicial discretion of the court concerned to issue necessary directions in this regard.*

72.5. (e) *If apart from the information contained in the Affidavits of Disclosure, any further information is required, the court concerned may pass appropriate orders in respect thereof.*

72.6. (f) *If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek permission of the court to serve interrogatories, and seek production of relevant documents from the opposite party under Order 11 CPC. On filing of the affidavit, the court may invoke the provisions of Order 10 CPC or Section 165 of the Evidence Act, 1872, if it considers it necessary to do so. The income of one party is often not within the knowledge of the other spouse. The court may invoke Section 106 of the Evidence Act,*



1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned.

72.7. (g) If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended/supplementary affidavit, which would be considered by the court at the time of final determination.

72.8. (h) The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the court may consider initiation of proceeding under Section 340 CrPC, and for contempt of court.

72.9. (i) In case the parties belong to the economically weaker sections (“EWS”), or are living below the poverty line (“BPL”), or are casual labourers, the requirement of filing the affidavit would be dispensed with.

72.10. (j) The Family Court/District Court/Magistrate's Court concerned must make an endeavour to decide the IA 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.

72.11. (k) A professional Marriage Counsellor must be made available in every Family Court.”

xxx	xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx	xxx

14. Nothing is evident from the record or even pointed out by the learned counsel for the appellant at the time of hearing that affidavits were filed by both the parties in terms of judgment of this Court in **Rajnesh’s** case (*supra*), which was directed to be communicated to all the High Courts for further circulation to all the Judicial Officers for awareness and implementation. The case in hand is not in isolation. Even after pronouncement of the aforesaid judgment, this Court is still coming across number of cases decided by the courts below fixing maintenance, either interim or final, without their being any affidavit on record filed by the parties. Apparently, the officers concerned have failed to take notice of the guidelines issued by this Court for expeditious disposal of cases involving grant of maintenance. Comprehensive guidelines were issued pertaining to overlapping jurisdiction among courts when concurrent remedies for grant of maintenance



are available under the Special Marriage Act, 1954, Section 125 Cr.P.C., the Protection of Women from Domestic Violence Act, 2005, Hindu Marriage Act, 1955 and Hindu Adoptions and Maintenance Act, 1956, and Criteria for determining quantum of maintenance, date from which maintenance is to be awarded, enforcement of orders of maintenance including fixing payment of interim maintenance. As a result, the litigation which should close at the trial level is taken up to this Court and the parties are forced to litigate.”

Thus, it is unequivocal that filing of affidavit(s) of assets and liabilities of rival parties, as mandated by the Hon’ble Supreme Court, is pertinent and essential.

7. It is not in dispute and rather has been conceded by the learned counsels for the rival parties that, that the affidavit(s) of assets/liabilities of rival parties were not brought on record. As a result thereof, the impugned judgment cannot be sustained on this score alone.

Decision

8. Keeping in view the totality of facts and circumstances of the case, it is directed as follows:

(i) The impugned judgment dated 07.10.2021 passed by Additional Sessions Judge, Charkhi Dadri, Haryana and the order dated 19.01.2021 passed by JMIC, Charkhi Dadri are set-aside.

(ii) The parties are directed (through their respective counsel) to appear before the concerned competent trial Court/Family Court on 16.09.2024 whereinafter the said Court shall proceed further, in accordance with law, with the matter & decide the same after taking affidavit(s) of assets/liabilities as directed for by the Hon’ble Supreme Court in the judgments titled as ***Rajnish vs. Neha, 2021(2) SCC 324*** and ***Aditi @ Mithi***



(iii) The petition (under Section 125 of Cr.P.C., 1973 for grant of maintenance) was instituted in the year 2020 & hence the Court below is directed to decide the matter expeditiously, in accordance with law, preferably within a period of 04 months from date of the receipt/production of certified copy of this order.

9. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

August 27, 2024
Ajay

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