

110 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR(F)-1173-2024 (O&M)
Date of decision: 12.09.2024

NAZAR MOHAMMAD @ NAZAR MOHD.

...PETITIONER

V/S

FARJANA AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Munfaid Khan, Advocate
for the petitioner.

HARPREET SINGH BRAR J. (ORAL)

CRM-36877-2024

This is an application under Section 5 of Limitation Act seeking condonation of delay of 1386 days in filing the accompanying revision petition mainly on the ground of illiteracy of applicant-petitioner.

For the reasons mentioned in the application, same is allowed and delay of 1386 days in filing the accompanying revision petition is condoned.

CRR(F)-1173-2024

1. The present revision petition has been preferred against the impugned order dated 06.09.2018 passed by the learned Principal Judge, Family Court, Faridabad under Section 125 of the Cr.P.C. vide which maintenance to the tune of Rs. 5,000/- per month (i.e. Rs. 3,000/- to respondent No. 1-wife and Rs. 2,000/- to respondent No. 2-minor child) was awarded in favour of respondents.

2. The marriage between the petitioner-husband and respondent No. 1-wife was solemnized on 02.11.2011 as per Muslim rites and ceremonies. One male child-respondent No. 2 was born from the wedlock. However, matrimonial dispute ensued between the couple and the respondents filed a



petition under Section 125 Cr.P.C. seeking maintenance. The learned Family Court vide impugned judgment dated 06.09.2018 granted maintenance to the tune of Rs. 5,000/- per month (i.e. Rs. 3,000/- to respondent No. 1-wife and Rs. 2,000/- to respondent No. 2-minor child) in favour of the respondents. Aggrieved by the same, petitioner-husband has preferred this revision petition.

3. Learned counsel for the petitioner-husband *inter alia* contends that petitioner has no source of income, whereas respondent No. 1-wife is running a tailor shop and she has the potential to earn her livelihood and also to maintain their son and petitioner has been proceeded against *ex parte* and he has been deprived of his rights to defend his case. The amount of maintenance of Rs. 5,000/- per month as assessed by learned Family Court is on the higher side and not in consonance with the income of the petitioner.

4. I have heard the learned counsel for the petitioner and gone through the case file with his able assistance.

5. 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.

6. 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.”

7. 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.

8. 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.

9. 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 -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

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."

10. It is trite law that an able-bodied husband is legally and morally bound to maintain his wife. However, if the husband is unemployed or documentary proof qua his income is not available, it can be reasonably assumed that he can work as a labourer and earn the prevalent minimum wages. Reliance in this regard can be placed on judgments rendered by the Hon'ble Supreme Court in ***Bhuvan Mohan Singh vs. Meena 2014(3)***

R.C.R(Criminal) 723 and this Court in ***Amanjot Singh vs. Rajwant Kaur***

2017(1) R.C.R(Criminal) 1070, Satish @Bittoo vs. Suresh Devi 2018(1) Law Herald 595, Dalip Kumar @ Deepa vs. Sunita and another 2012(2) R.C.R. (Criminal) 434 and Sandeep vs. Suman in CR-1802-2023 decided on 22.03.2023.

11. Having heard learned counsel for the petitioner and perusing the record, this Court finds no force in the arguments advanced by learned counsel for the petitioner. Maintenance of Rs. 5,000/- per month, as awarded by learned Family Court below, cannot be termed as excessive by any stretch of imagination. Admittedly, the respondents are wife and son of the petitioner and being a husband and father, he is morally and legally bound to pay maintenance to them as assessed by learned Family Court below. Learned counsel for the petitioner has not been able to indicate any perversity in the impugned order which warrants interference by this Court. Accordingly, this revision petition is hereby dismissed being bereft of any merit.

12. Pending CRM(s), if any, are also disposed of accordingly.

September 12, 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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