



CRR(F)-1071-2022

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

302

CRR(F)-1071-2022

Date of decision: 12.09.2024

Parvinder Saini @ Parvinder Singh

...Petitioner

V/s

Pushpa Saini @ Pushpa Rani

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. K.L. Saini, Advocate for the petitioner.

Ms. Himani Anand, Advocate and

Ms. Vandana, Advocate for the respondent.

SUMEET GOEL, J. (Oral)

1. Present revision petition has been directed against the order dated 14.07.2022 passed by Principal Judge, Family Court, Kurukshetra, Camp Court at Pehowa whereby the *ex parte* order dated 17.11.2016 passed by Judicial Magistrate Ist Class, Kurukshetra, was affirmed & the order dated 26.05.2016 passed by JMIC, Kurukshetra whereby the respondent-wife was awarded maintenance allowance at the rate of Rs.3000/- per month to be paid by the petitioner-husband (herein), from the date of filing of the petition. The respondent-wife (herein) had filed a petition, under Section 125 of Cr.P.C., 1973 before the Judicial Magistrate Ist Class, Kurukshetra stating that she is the wife of the petitioner (herein) and is unable to maintain herself and hence the maintenance ought to be awarded to her.

2. Learned counsel for the petitioner has argued that the order passed by the Court below is patently erroneous, while granting the maintenance allowance to the respondent (herein), inasmuch as the



respondent has miserably failed to substantiate her claim for grant of maintenance on account of her inability to maintain herself. It has been further submitted by the learned counsel that both the minor children are living with the petitioner and all their expenses are being borne by the petitioner, who is the only earning member in the family. Learned counsel has further submitted that both the children are having mental disability to the extent of 75% and 50% respectively and the petitioner is incurring huge expenditure on their treatment. According to the learned counsel, the petitioner is working as a labourer and is barely earning Rs.10,000/- per month. Learned counsel has further argued that, in any case, the Court below, while passing the *ex-parte* order, has adopted a wrong approach while proceeding *ex-parte* against the petitioner (herein) and consequently granting the maintenance allowance. Furthermore, it has been argued that the Family Court vide its order dated 14.07.2022 did not take into consideration the explanation tendered by the petitioner (herein) for his absence while refusing to set-aside the *ex-parte* order and affirming the order passed by the Judicial Magistrate Ist Class, Kurukshetra. Thus, it has been prayed that the instant petition be accepted and the impugned orders are liable to be set-aside.

3. *Per contra*, learned counsel appearing for the respondent has argued that the learned JMIC had rightly proceeded *ex-parte* against the petitioner, as his absence was deliberate and with an oblique motive to avoid the payment of interim maintenance earlier granted vide order dated 26.05.2016. Moreover, the respondent-wife has no independent source of



maintenance has been done after taking due consideration of the relevant facts and circumstances. Thus, it has been prayed that present petition be dismissed and no interference, whatsoever is called for in the impugned orders.

4. I have heard learned counsel for the parties and have perused the record.

5. It would be apposite to refer herein to a judgment of the Hon’ble Supreme Court in the case titled as **Rajnesh vs. Neha & Anr.:** **2021(2) SCC 324**, relevant whereof reads as under:

“III Criteria for determining quantum of maintenance

(i) The objective of granting interim / permanent alimony is to ensure that the dependant spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

82. *The factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependant children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife. Refer to **Jasbir Kaur Sehgal v. District Judge, Dehradun & Ors. (1997) 7 SCC 7**. Refer to **Vinny Paramvir Parmar v. Paramvir Parmar (2011) 13 SCC 112**.*

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xxx	xxx	xxx	xxx

84. *On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependant family members whom he is obliged to maintain under the law, liabilities if*



any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications. **Reema Salkan v. Sumer Singh Salkan (2019) 12 SCC 303.**

ii) A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. **Chaturbhuj v. Sita Bai (2008) 2 SCC 316.**

85. The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

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xxx	xxx	xxx	xxx

86. In a marriage of long duration, where parties have endured the relationship for several years, it would be a relevant factor to be taken into consideration. On termination of the relationship, if the wife is educated and professionally qualified, but had to give up her employment opportunities to look after the needs of the family being the primary caregiver to the minor children, and the elder members of the family, this factor would be required to be given due importance. This is of particular relevance in contemporary society, given the highly competitive industry standards, the separated wife would be required to undergo fresh training to acquire marketable skills and re-train herself to secure a job in the paid workforce to rehabilitate herself. With advancement of age, it would be difficult for a dependant wife to get an easy entry into the work-force after a break of several years.

xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx

(d) Maintenance of minor children



96. *The living expenses of the child would include expenses for food, clothing, residence, medical expenses, education of children. Extra coaching classes or any other vocational training courses to complement the basic education must be factored in, while awarding child support. Albeit, it should be a reasonable amount to be awarded for extra-curricular / coaching classes, and not an overly extravagant amount which may be claimed.*

97. *Education expenses of the children must be normally borne by the father. If the wife is working and earning sufficiently, the expenses may be shared proportionately between the parties.”*

6. A perusal of the factual matrix of the case in hand reflects that petitioner-husband (herein) was not pursuing his case diligently before the JMIC, Kurukshetra. Initially, he entered appearance and filed reply to the petition under Section 125 Cr.P.C. thereby denying the facts raised in the petition and prayed for dismissal thereof. It appears that after framing of the issues, the petitioner had not caused appearance and accordingly he was ordered to be proceeded against *ex-parte* which shows that the petitioner was not prosecuting his case diligently. Thereafter, the respondent-wife was allowed to lead her *ex parte* evidence. In the absence of any cogent documentary proof, the income of the petitioner-husband was taken as Rs.10,200/- per month as that of a casual labourer. After appraisal of the material/evidence on record coupled with the fact that the respondent is the legally wedded wife of the petitioner; living separately from the petitioner and has no independent source of income, JMIC, Kurukshetra vide its order dated 17.11.2016 directed maintenance allowance of Rs.3000/- per month, to be paid by the petitioner (herein) which cannot be said to be on the higher side and is rather just and appropriate in the facts/circumstances of the present case. Dis-satisfied, the petitioner filed an application dated



13.08.2019 seeking setting-aside of the *ex-parte* order and the subsequent *ex-parte* judgment dated 17.11.2016 passed by the JMIC, Kurukshetra. However, perusal of the application reflects that the ground(s) pleaded by the petitioner therein was that he was informed by his counsel that since the parties had arrived at an agreement, therefore, there was no necessity for his appearance as the case stands withdrawn. Thereafter, it is upon the receipt of the conditional warrants, the petitioner came to know of the pendency of the petition and the order vide which he was proceeded against *ex-parte*. In considered opinion of this Court, the explanation and reasons so tendered by the petitioner in his application for setting-aside the *ex-parte* order are neither plausible nor sufficient to set-aside the *ex-parte* order and judgment. The plea raised by the petitioner that he had no knowledge about the pendency of the petition under Section 125 of Cr.P.C. is belied by the fact itself that after notice, he had caused appearance and filed reply to the said petition. Furthermore, vide order dated 26.05.2016, the petitioner had already been directed to pay Rs.2,000/- as interim maintenance to the respondent. While going through the impugned order, it transpired that the petitioner has not paid any maintenance to the respondent as directed for is indicative of the fact that the petitioner somehow tried to delay and avoid the payment of maintenance allowance to the respondent-wife. Moreover, it is pertinent to note herein that the application seeking setting-aside of *ex-parte* order and subsequent *ex-parte* judgment dated 17.11.2016 was preferred on 13.08.2019. No plausible explanation has been furnished by the petitioner with regard to non-filing of the said application within the reasonable time.



the petitioner in correct perspective. In considered opinion of this Court, the order dated 14.07.2022 whereby the *ex-parte* order dated 17.11.2016 (Annexure P-1) passed by the Judicial Magistrate Ist Class, Kurukshetra, directing the petitioner to pay maintenance allowance of Rs.3,000/- per month to respondent-wife as also to children was affirmed, is a well reasoned order and does not call for any interference by this Court.

7. In view of the above, the present petition does not call for any interference. The same is hereby dismissed. No order as to costs.
8. Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

September 12, 2024
Ajay

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