



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

CRR (F) No.1096 of 2022 (O&M)

Date of Decision: 08.05.2024

Reserved on: 25.04.2024

Smt. Poonam and another

... Petitioners

Versus

Dinesh Kumar

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Ajay Jain, Advocate,
for the petitioners.

Mr. Anurag Jain, Advocate,
for the respondent.

MANISHA BATRA, J.

1. The petitioners are challenging the order dated 28.09.2022 as passed by learned Principal Judge, Family Court, Hisar in Maintenance Petition No.426-III of 2019 titled as Smt. Poonam and another v. Dinesh Kumar whereby an application as filed by the respondent for modification in the order dated 24.08.2021, as passed by the same Court had been allowed.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the petitioners who are wife and minor son respectively of the respondent have filed the aforementioned petition under Section 125 of Cr.P.C. as against the present respondent on the allegations that they are unable to maintain themselves and further that the respondent has neglected and refused to maintain them. Along with

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the main petition, the petitioners had also moved an application for grant of interim maintenance. Vide order dated 24.08.2021, the learned Principal Judge directed the respondent to pay an amount of Rs.8000/- per month to the petitioners as interim maintenance. Subsequently, the respondent filed an application before the Family Court seeking modification in the order dated 24.08.2021 submitting therein that the amounts of Rs.7,00,000/- and Rs.3,30,000/- respectively which were lying deposited in the form of Fixed Deposit Receipts had been got encashed by petitioner No.1 and got credited in her bank account on 14.11.2019 just before filing of the petition under Section 125 of Cr.P.C. It was submitted that since those FDRs were prepared way back on 25.09.2017 in the joint name of respondent and petitioner No.1, with the funds of the respondent and as the amount of these FDRs was now available with the petitioner No.1 for maintenance of her son as well as herself, therefore, prayer had been made for adjusting the arrears of amount of interim maintenance against the abovesaid amount of Rs.8,80,000/-.

3. The Family Court is shown to have disposed of the application so filed by the respondent vide the impugned order dated 28.09.2022 by observing that the petitioner No.1 did not dispute the factum of credit of amount of Rs.8,80,000/- in her bank account on 14.11.2019 i.e. before filing of the petition under Section 125 of Cr.P.C. on 19.11.2019 and as the abovesaid amount was with her with which she could easily maintain herself as on the date of filing of the petition therefore, the arrears of interim maintenance could be adjusted against the abovesaid amount.

4. It is argued by learned counsel for the petitioners that the

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impugned order is not sustainable in the eyes of law as while passing the same, the learned Family Court had lost sight of the fact that once an order for grant of interim maintenance had been passed in favour of the petitioners, then the course open to the respondent was to challenge the order fixing interim maintenance by approaching the higher Court and not by way of seeking modification of the same. It is further argued that the impugned order was passed by the Court without there being any material on record to show that the amount of Rs.8,80,000/- as lying deposited in the bank account of petitioner No.1 was so deposited by the respondent. The respondent had never challenged the order dated 24.08.2021. The main petition is yet to be decided by the Family Court. With these broad submissions, it is argued that the petition deserves to be allowed, the impugned order is liable to be set aside and further that the amount as lying deposited in the bank account of the petitioner No.1 cannot be ordered to be adjusted against the arrears of the interim maintenance amount.

5. Per contra, learned counsel for the respondent has argued that no reason for interfering in the well reasoned order as passed by the learned Family Court is made out. The inability of the wife to maintain herself was the first condition for entitlement to seek interim maintenance. Since an amount of Rs.8,82,000/- was lying credited and deposited in the bank account of petitioner No.1 just prior to filing of the petition, therefore, the same was sufficient proof of the fact that she was fully capable of maintaining herself as well as her minor child. It is also argued that the Family Court in exercise of its powers under Section 10 of the Family Courts Act, 1984 was competent to modify the order dated 24.08.2021

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granting interim maintenance and by doing so, no illegality could be stated to have been committed by it. With these broad submissions, it is urged that the petition does not deserve to be allowed.

6. I have heard learned counsel for both the parties at considerable length and have gone through the record.

7. On giving due deliberations to the contentions raised by both the sides and a careful perusal of the material placed on record, it is revealed that the learned Family Court vide order dated 24.08.2021 had given direction to the respondent to pay interim maintenance to the tune of Rs.8000/- per month to the petitioner(s) without clarifying that this amount was to be shared equally by both the petitioners or was to be given to one of them. It has also been noticed that this order had been passed without finally deciding the application of the petitioners for grant of interim maintenance and, therefore, it appears to have been passed by way of temporary/provisional measure, since even the written statement and reply of the respondent had not come on record by that time. It can, however, be reasonably assumed that by passing the order dated 24.08.2021, the learned Family Court intended to direct the respondent to pay interim maintenance to the tune of Rs.4000/- per month to each of the petitioners, till the decision of the application for grant of interim maintenance i.e. total amount of Rs.8000/- per month.

8. So far as the fact that an amount of Rs.8,82,000/- was deposited in the bank account of the petitioner No.1 is concerned, on a perusal of Annexure P-6 which is copy of extract of entries made in the bank account passbook of the petitioner No.1, it is revealed that amount of Rs.8,82,000/-

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was credited in the same as on 14.11.2019 i.e. just before filing of this petition on 19.11.2019. In reply to the application filed by the respondent for modification of the order dated 24.08.2021, the petitioner No.1 simply denied the averment made by the respondent in his complaint that this amount was credited from their joint FDR, without giving any clarification about the source of such deposit. Even in the present petition, no explanation as to from where this amount was credited and deposited in her bank account has been given by petitioner No.1 nor any denial about this deposit has been made. Rather, Annexure P-6 showing such entries is filed by petitioner No.1 herself.

9. Now the question that arises for consideration is as to whether the Family Court was justified in modifying the order dated 24.08.2021 by directing adjustment of the amount of arrears of interim maintenance payable to both the petitioners from the aforementioned amount of Rs.8,80,000/-. In my considered opinion, the answer should be in the negative mainly due to the reason that as discussed above, the amount of Rs.8,000/- was directed to be paid as a provisional measure not only to the petitioner No.1 but to petitioner No.2 as well who being minor son of respondent No.2 is entitled to be maintained by him and as discussed above, out of amount of interim maintenance of Rs.8,000/- per month and an amount of Rs.4000/- is presumed to be directed to be paid for his maintenance by the learned Family Court. As such, the petitioner No.1 could not at all be compelled to get the arrears of interim maintenance amount payable to petitioner No.2, adjusted from the amount lying deposited in her name and in her bank account as the liability as well as responsibility of the

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respondent being father of minor petitioner was not lessened or absolved due to the petitioner No.1 having some money lying deposited in her bank account but that aspect was not considered by learned trial Court. Therefore, in my opinion, the learned Family Court was not justified in getting arrears of entire amount of interim maintenance adjusted from the amount lying deposited in bank account of the petitioner No.1.

10. Proceeding further, so far as the question that the petitioner No.1 was capable of maintaining herself from the amount of Rs.8,82,000/- lying deposited in her bank account is concerned, such question can be decided by the learned Family Court only on the basis of thorough assessment and evaluation of the evidence to be produced before it during the course of trial and not at this stage when even application for grant of interim maintenance had not been finally decided. No doubt, any such order for adjustment of the abovesaid amount could be passed only if some evidence came on record to show that the said amount originally belonged to the respondent himself and further the source and reason of such deposit. The learned Family Court without going into that question straightaway proceeded to modify its order which was only provisional order and did not consider that any order with regard to the adjustment of arrears of interim maintenance directed to be paid to petitioner No.1 from the aforementioned amount as well could not be passed at this stage. With these observations, it is held that the impugned order is not sustainable. Accordingly, the petition is allowed and the impugned order dated 28.09.2022 is set aside.

11. However, I consider it proper to clarify that the respondent would be at liberty to lead evidence to prove his claim that the amount of

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Rs.8,82,000/- as lying deposited in the bank account of the petitioner was the amount of money originally belonging to him and was originally deposited in the joint name of petitioner No.1 and himself in the form of FDR and the Family Court after considering the evidence available on record shall be at liberty to pass appropriate order if the circumstances warrant adjustment of the amount of final maintenance to be awarded to petitioner No.1 from the aforementioned amount of Rs.8,80,000/- and shall in no manner be prejudiced by this order that has been passed by this Court keeping in view the peculiar facts and circumstances existing as on date.

12. Miscellaneous application(s), if any, also stand disposed of.

08.05.2024
manju

(MANISHA BATRA)
JUDGE

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