



102

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-1221-2024 (O&M)

Date of decision: 04.11.2024

Harjot Preet Singh

... Petitioner

Vs.

Sawdeep Kaur and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vishal Thakur, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been preferred against the impugned order dated 01.08.2024 passed by learned Principal Judge, Family Court, Hoshiarpur/Camp Court at Mukerian, vide which, in the proceedings initiated under Section 125 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') [now Section 144 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS')], interim maintenance of Rs.5,000/- per month each was awarded to be paid to the respondents.

2. The marriage between the petitioner and respondent No.1 was solemnized on 19.03.2017 according to Sikh rites and rituals. Out of this wedlock, one male child i.e. respondent No.2 was born. However, matrimonial



dispute ensued between the couple and the respondents filed a petition under Section 125 Cr.P.C. (*now Section 144 of BNSS*) seeking maintenance, in which an application for grant of interim maintenance was moved. The petitioner filed a reply and contested the said application. Learned Family Court, vide impugned order dated 01.08.2024, granted interim maintenance allowance of Rs.5,000/- per month each in favour of the respondents. Aggrieved by the same, the petitioner has approached this Court by filing the present petition.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner is earning only Rs.29,000/- per month. Respondent No.1 is highly qualified lady having post-graduate degree in English along with B.Ed. and as such, she has potential to earn her livelihood. However, learned Family Court fell into grave error by awarding interim maintenance of Rs.5,000/- per month each to both the respondents. The petitioner is working in a private company and in para No.6 of the impugned order, it has been wrongly observed that he is a Govt. employee. Further, the petitioner is paying the monthly installments of Rs.8,814/- per month towards repayment of his loan and he is also paying Rs.2,000/- per month for the medicines of his parents.

4. Having heard learned counsel for the petitioner and after perusing the record with his able assistance, this Court finds no force in the arguments advanced on behalf of the petitioner.

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. (*now Section 144 of BNSS*) 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. (*now Section 144 of BNSS*) 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.) Vs. Veeraswamy (K.) (1991) 2 SCC 375***, speaking through Justice Fatima Beevi, opined 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.”

7. Further, a two-Judge Bench of the Hon'ble Supreme Court in ***Kirtikant D. Vadodaria Vs. 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.”

8. 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 she/he can maintain herself/himself, have sufficient funds to pursue the litigation, and not suffer at the instance of the affluent spouse.

9. 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.

10. While dealing with the issue of maintenance *in extenso*, a two



Judge Bench of the Hon'ble Supreme Court in ***Rajnish Vs. 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 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."

11. At this stage, only interim maintenance has been awarded by learned Family Court, which is subject to adjustment at the time of final disposal and the parties are yet to prove their respective claims by adducing the evidence. From perusal of the record, it transpires that in the affidavit furnished by the petitioner declaring his assets, income and liabilities, he indicated his income as Rs.29,000/- per month. The Hon'ble Supreme Court in ***Kalyan Dey Chowdhary Vs. Rita Dey Chowdhary Nee Nandy, AIR 2017 SC 2383*** has held that awarding 25% of the husband's salary as maintenance to the wife would be just and proper. Further, this Court in ***Mukesh Kumar Vs. Rekha Rani and another, 2018(3) RCR (Crl.) 135***, has held that a person



cannot be permitted to wriggle out his statutory liability by availing huge loans and only statutory deductions are to be excluded for the assessment of income of the husband and any EMIs for the repayment of loan taken by the husband, cannot be excluded, while granting the maintenance.

12. Further, perusal of the impugned order passed by learned Family Court makes it 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 respondents. Learned counsel for the petitioner 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.

13. All the pending miscellaneous application(s), if any, shall also stand disposed of.

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

[HARPREET SINGH BRAR]
JUDGE

04.11.2024
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No