

CRR(F)-1230-2024
Date of decision: 24.09.2024

...PETITIONERS

CHANDAN BANDHA

...RESPONDENT

Present: Mr. Sourabh Chauhan, Advocate for
Mr. Kanwal S. Walia, Advocate
for the petitioners.

1. The present petition has been preferred against order dated 25.07.2024 passed by learned Family Court, Ludhiana, under Section 125 of the Cr.P.C., vide which, interim maintenance of Rs.5,000/- per month each was awarded in favour of the petitioners, wife and daughter of the respondent, however, in favour of petitioner No.1 only till 30.11.2023.

2. The marriage between petitioner No.1 and respondent was solemnised on 18.11.2020. Out of this wedlock, one female child (petitioner No.2 herein) was born. However, matrimonial dispute ensued between the couple and petitioners filed a petition under Section 125 Cr.P.C. seeking maintenance. The respondent filed a reply and contested the claim made by the petitioners. The learned Court below vide order dated 25.07.2024 awarded interim maintenance Rs.5,000/- per month each in favour of the petitioners, however, to petitioner No.1 only till 30.11.2023. Aggrieved by the same, the petitioners have approached this Court by filing the present petition seeking enhancement of the maintenance amount.



3. Learned counsel for the petitioners *inter alia* contends that respondent-husband is running business of medical supply and chemist shop. His actual income is more than Rs.1 lac, whereas, learned Court below at the time of awarding the interim maintenance has only awarded Rs.10,000/- to both the petitioners, which is not in consonance with the actual income of the respondent. Learned Court below has gravely erred in and not considering the material available on record.

4. Having heard learned counsel for the petitioners and after perusing the record with his able assistance, the present petition is being decided in limine, in order to save litigation cost of the respondent and judicial time of the Court. This Court finds no force in the arguments advanced by learned counsel for the petitioners as at this stage, only interim maintenance has been awarded. The parties are yet to prove their respective claims by leading evidence in their support. A perusal of the record further indicates that petitioner No.1 joined in Oxame Ltd. as Sales Executive, in December, 2023 where she is drawing a salary of Rs.25,000/- per month. Further, the affidavit of the respondent-husband reveals that he is paying monthly installment of Rs.11,374/- for repayment of car loan and Rs.9,000/- per month towards repayment of personal loan of Rs.7 lacs. As per the settled law only statutory deductions are to be excluded from the actual income of the husband. Any EMI for the loans taken by him cannot be excluded for the purpose of assessing his actual income.

5. It is further significant to note that petitioner has liability towards repayment of loan is not material as per decision of our Hon'ble High Court in ***Mukesh Kumar vs. Rekha Rani and another, 2018(3) RCR (Criminal) 135*** wherein, it was held that "***a person cannot be permitted to wriggle out of his***



statutory liability by way of availing huge loans and reducing the substantial amount of salary for repayment of the same every month.”

6. The object and purpose behind granting interim 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.

7. 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.”

8. Another objective the legislature has sought to achieve by this provision is to provide interim 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.

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 interim maintenance which is just and fair in terms of principle of equistatus. The quantum of interim maintenance must be justifiable and realistic to provide succour to the dependent spouse and also to avoid occurrence of the two extremes of the interim maintenance being either paltry or extravagant, ensuring that neither of the two is reduced to a life of penury. The adequacy of the interim 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 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 - 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. In view of the above, present petition stands disposed of with liberty to the petitioners to raise all the pleas taken in the present petition at the appropriate stage, during the course of trial before the learned Family Court. Learned Addl. Principal Judge, Family Court, Ludhiana is directed to pass the final order strictly in accordance with law and also in view of the ratio of law laid down by the Hon’ble Apex Court in **Rajnesh** (*supra*) and the judgment passed by this Court in **Mukesh Kumar** (*supra*).

12. Nothing observed hereinabove shall be construed to be an expression of opinion by this Court lest it may prejudice the trial. The learned Court below is directed to proceed with the trial on its own merits, strictly in accordance with law.

September 24, 2024
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(HARPREET SINGH BRAR)
JUDGE

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