IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

127 **CRR(F)-1312-2024**

Date of decision: 18.10.2024

Vikrant Tank ....Petitioner

V/s

Deepika ....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Ishan Singh Cooner, Advocate for the petitioner

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SUMEET GOEL, J. (Oral)

1. Present revision petition has been preferred against the order dated 03.08.2024 passed by the Principal Judge, Family Court, Ambala (hereinafter to be referred as the 'concerned Family Court') praying for setting-aside of the said order. Vide the impugned order; the respondent (herein) has been awarded interim maintenance at the rate of Rs.6,000/- per month from the date of application till 16.06.2024, thereafter Rs.8,000/- per month from 17.06.2024 till the date of disposal of the main petition to be paid by the petitioner (herein) alongwith litigation expenses of Rs.6,000/-.

2. Learned counsel appearing for the petitioners has iterated that the learned Family Court has erred in determining the quantum of interim maintenance awarded to the petitioners (herein) insofar as the income of the respondent is concerned. It has been further reiterated that the learned Family Court has failed to consider that the respondent-wife, being a postgraduate (M.Com), is providing tuition to students of higher classes, earning a substantial income, and is capable of supporting herself. According to learned counsel, the Family Court ought to have dismissed the petition at the very first instance, as the respondent (herein) intentionally

misrepresented the material facts before the Family Court. Learned counsel has further submitted that the petitioner has additional financial obligations, including a monthly car loan instalment of Rs.10,000/-, a P.F. loan with an EMI of Rs.7,000/- and the responsibility of maintaining his parents. It has been further submitted that the learned Family Court has failed to consider that the respondent-wife deserted the petitioner-husband without any reasonable cause and is currently residing with her father. Therefore, the actions and conduct of the respondent should disqualify her from claiming any maintenance from the petitioner. Learned counsel has further argued that the Family Court ought to have considered this aspect before fastening with the liability to pay the interim maintenance to the respondents. Thus, it has been prayed that the impugned order is patently illegal, perverse and suffers from material illegalities and infirmities and the same is liable to be set-aside.

3. I have heard learned counsel for the petitioner and have perused the available record.

4. It would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court titled as ***Rajnesh vs. Neha & Anr.: 2021(2) SCC 324;*** relevant whereof reads as under:-

*"**II Payment of interim Maintenance***

1. *The proviso to Section 24 of the HMA (inserted vide Act 49 of 2001 w.e.f. 24.09.2001), and the third proviso to Section 125 Cr.P.C., 1973 (inserted vide Act 50 of 2001 w.e.f. 24.09.2001) provide that the proceedings for interim maintenance, shall as far as possible, be disposed of within 60 days' from the date of service of notice on the contesting spouse. Despite the statutory provisions granting a time-bound period for disposal of proceedings for interim maintenance, we find that application remain pending for several years in most of the cases. The delays are caused by various factors, such as tremendous docket pressure on the Family Courts, repetitive adjournments sought by parties,*

enormous time taken for completion of pleadings at the interim stage itself, etc. Pendency of applications for maintenance at the interim stage for several years defeats the very object of the legislation.

2. *At present, the issue of interim maintenance is decided on the basis of pleadings, where some amount of guess-work or rough estimation takes place, so as to make a prima facie assessment of the amount to be awarded. It s often seen that both parties submit scanty material, do not disclose the correct details, and suppress vital information, which makes it difficult for the Family Courts to make an objective assessment for grant of interim maintenance. While there is a tendency on the part of the wife to exaggerate her needs, there is a corresponding tendency by the husband to conceal his actual income.*

74. It has therefore, become necessary to lay down a procedure to streamline, the proceedings, since a dependant wife, who has no other source of income, has to take recourse to borrowings from her parents/relatives during the interregnum to sustain herself and the minor children, till she begins receiving interim maintenance.

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(j) The concerned Family Court /District Court/Magistrate's Court must make an endeavour to decide the I.A. for Interim Maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.

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132. The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the concerned Family Court/District Court/Magistrate's Court, as the case may be, throughout the country;

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5. Vide the impugned order passed by the Family Court, the aspect of interim maintenance has been decided. It goes without saying that a decision upon the aspect (especially quantum) of interim maintenance, being result of some element of estimation, has to be construed accordingly as the entitlement of the applicant (making a plea for grant of interim

maintenance) cannot be based upon exact arithmetical calculations at such stage. The order granting interim maintenance is, indubitably, subject to final adjudication and it is a provisional step subject to final determination to be made on the conclusion of proceedings. In other words, the interim maintenance is only tentative & is subject to fixation of final maintenance.

6. Indubitably, the relationship between the parties is not in dispute. The facts of the instant case reflect that vide the impugned order; the respondent, who is the wife of the petitioner, has been granted interim maintenance at the rate of Rs. 6,000/- per month from the date of application till 16.06.2024, thereafter Rs.8,000/- per month from 17.06.2024 till the date of disposal of the main petition. While going through the impugned order, it transpires that the respondent has consistently maintained throughout the proceedings that she is financially dependent on her father. As per the affidavit of assets and liabilities filed before the Family Court, the petitioner-husband is working as Assistant in Punjab University, Chandigarh and drawing a monthly salary of Rs.40,522/-. Furthermore, it has been disclosed in the affidavit that the petitioner-husband has incurred liabilities in the form of a car loan alongwith PF loan taken on the occasion of marriage of his younger brother. The corresponding monthly EMI obligations of the petitioner-husband are Rs.10,000/- for the car loan and Rs.7,000/- for the PF loan; totaling a sum of Rs.17,000/- towards loan repayments. In light of the above financial disclosures, it is imperative to note herein that while determining the quantum of maintenance it is not necessary to take into consideration the liabilities of the petitioner-husband, which are on account of own volition. In the considered opinion of this Court, a fair balance must

be struck between the legal obligation of the husband to provide maintenance to the wife and his financial capacity. At this juncture, it would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court titled as ***Dr. Kulbhushan Kunwar vs. Raj Kumari, 1971 AIR 234;*** relevant whereof reads as under:

> *"19. It was further argued before us that the High Court went wrong in allowing maintenance at 25% of the income of the appellant as found by the Income Tax Department in assessment proceedings under the Income Tax Act. It was contended that not only should a deduction be made of income-tax but also of house rent, electricity charges. the expenses for maintaining a car and the contribution out of salary to the provident fund of the appellant. In our view some of these deductions are not allowable for the purpose of assessment of "free income" as envisaged by the Judicial Committee. Income Tax would certainly be deductible and so would contributions to the provident fund which have to be made compulsorily. No deduction is permissible for payment of house rent or electricity charges. The expenses for maintaining the car for the purpose of appellant's practice as a physician would be deductible only so far as allowed by the income-tax authorities i.e. in case the authorities found that it was necessary for the appellant to maintain a car."*

6.1. Further; the Hon'ble Delhi High Court in the judgment titled as ***Marryamma @ Maryamal vs. Shri Mani: Neutral Citation No.2023:DHC:2411;*** has held as under:

> *"14. In the opinion of this Court, the contention of the learned counsel for respondent that while assessing the income of the respondent, the Court has to consider that he is making payment of more than Rs.10,000/- per month towards EMI of the loan that he has taken towards repair of his house is bereft of any merit since it has been categorically laid down by the Hon'ble Apex Court that only mandatory, statutory deductions are permitted to be deducted for the purpose of assessment of income of the husband. In this regard, reference can be made to the decision of Hon'ble Supreme Court in Jasbir Kaur Sehgal v. Distt. Judge, Dehradun & Ors. (1997) 7 SCC 7 whereby it has been observed as under:-*

"8. ...No set formula can be laid for fixing the amount of maintenance. It has, in the very nature of things, to depend on the facts and circumstances of each case. Some scope for leverage can, however, be always there. The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and ***of those he is obliged under the law and statutory but involuntary payments or deductions****. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case..."*

15. A Co-ordinate Bench of this Court in ***Nitin Sharma v. Sunita Sharma*** *2021 SCC OnLine Del 694 also, after considering several judicial precedents, had observed that only mandatory deductions and compulsory contributions are to be taken into account while ascertaining the amount of maintenance. The relevant observations read as under:*

24. In the opinion of this Court, ***while calculating the quantum of maintenance, the income has to be ascertained keeping in mind that the deductions only towards income tax and compulsory contributions like GPF, EPF etc. are permitted and no deductions towards house rent, electric charges, repayment of loan, LIC payments etc. are permitted.*** *On this aspect, the pertinent observations of Hon'ble Supreme Court in Dr. Kulbhushan Kunwar v. Raj Kumari (1970) 3 SCC 129, which have been followed by a Bench of Punjab & Haryana High Court in Seema v. Gourav Juneja 2018 SCC OnLine P&H 3045, are as under:-*

"12. Section 125 Cr.P.C. stipulates that if any person having sufficient means neglects or refuses to maintain his wife, his legitimate or illegitimate minor child, who are otherwise unable to maintain themselves, shall be obligated to do so. A moral duty and a statutory obligation is cast upon the husband to maintain his wife, minor children, parents who otherwise are not capable of maintaining themselves. ***A person cannot be permitted to wriggle out of his statutory liability by way of availing huge loans and reducing a substantial amount of his salary for repayment of the same every month. Deductions that are made from***

the gross salary towards long term savings, which a person would get back at the end of his service and such as deductions towards Provident Fund, General Group Insurance Scheme, L.I.C. Premium, State Life Insurance can be deemed to be an asset that he is creating for himself. In arriving at the income of a party only involuntary deductions like income tax, provident fund contribution etc. are to be excluded. Therefore, such deductions cannot be deducted or excluded from his salary while computing his "means" to pay maintenance. *In the case of Dr. Kulbhushan Kunwar v. Raj Kumari (1970) 3 SCC 129 : (1970) 3 SCC 129 : AIR 1971 SC 234 while deciding the question of quantum of maintenance to be paid, the argument raised that deduction not only of income-tax but also of house rent, electricity charges, the expenses for maintaining a car and the contribution out of salary to the provident fund of the appellant was not allowed. Only deductions towards income-tax and contributions to provident fund which had to be made compulsorily were allowed. The relevant portion of Dr. Kulbhushan Kunwar's case (supra) reads as under:-*

"19. It was further argued before us that the High Court went wrong in allowing maintenance at 25% of the income of the appellant as found by the Income Tax Department in assessment proceedings NEUTRAL CITATION NO. 2023:DHC:2411 under the Income Tax Act. It was contended that not only should a deduction be made of income-tax but also of house rent, electricity charges, the expenses for maintaining a car and the contribution out of salary to the provident fund of the appellant. In our view some of these deductions are not allowed for the purpose of assessment of "free income" as envisaged by the Judicial Committee. Income Tax would certainly be deductible and so would contributions to the provident fund which have to be made compulsorily. No deduction is permissible for payment of house rent or electricity charges. The expenses for maintaining the car for the purpose of appellant's practice as a physician would be deductible only so far as

> *allowed by the income-tax authorities i.e. in case the authorities found that it was necessary for the appellant to maintain a car."*
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> *13. In a nutshell,* ***a husband cannot be allowed to shirk his responsibility of paying maintenance to his wife, minor child, and parents by availing loans and paying EMIs thereon, which would lead to a reduction of his carry home salary."***

7. Keeping in view the principles governing the assessment of quantum of maintenance (whether interim or final) under Section 125 of Cr.P.C., 1973, it is indubitable that the deduction made from the income of the husband, which are on account of own volition of the husband, cannot be permitted. It is only the statutory deductions, which are mandated by law and beyond the control of the husband which can be taken into account. The petitioner-husband cannot be allowed to reduce his financial liability towards the maintenance of his spouse or children by resorting to voluntary deductions or expenses that do not have legal compulsion. The primary obligation to maintain the dependents is not diluted through artificial reduction of income. At this juncture, the contentions raised by learned counsel for the petitioner in the present petition with regard to factual aspect, are matter of trial and no ratiocination on the same can be effectively made at this stage. The same can only be ascertained after the parties adduce evidence. It is also apparent from the record that the order under challenge is only interim in nature and not a final decision on the maintenance petition. The amount of maintenance awarded is always subject to the adjustment which will depend on the final outcome of the maintenance petition filed by the respondent/wife.

7.1. Considering the facts and circumstances of the case, the maintenance amount, which has been directed to be paid by the petitioner (herein) to the respondent, vide the impugned order cannot be said to be on the higher side and is rather just and appropriate in the facts/circumstances of the case.

8. In view of above, the interim maintenance granted by the Family Court does not call for any interference. Accordingly, the instant petition is hereby dismissed.

9. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case and the Family Court shall proceed further, in accordance with law, without being influenced with them.

10. Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

October 18, 2024
Ajay

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