218 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR(F)-77-2016
Reserved on: 23.07.2024
Pronounced on: 26.07.2024

Natasha Vyas and another

...Petitioners

versus

Tapan Gautam

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Tushar Sharma, Advocate
for the petitioners.

None for the respondent.

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<u>HARPREET SINGH BRAR J.</u>

1. The present revision petition has been preferred against the impugned judgment dated 29.01.2016 passed by learned District Judge, Family Court, Gurgaon under Section 125 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), vide which maintenance of Rs.20,000/- per month was awarded to be paid to petitioner No.1 and Rs. 15,000/- to petitioner No.2.

2. The marriage between petitioner No.1 and the respondent was solemnized on 01.05.2007 in Delhi, according to Hindu rites and rituals. Out of this wedlock, one male child i.e. petitioner No.2, was born. The respondent left for the United States soon after the wedding and petitioner No.1 continued to reside in her matrimonial home, where she was harassed by her in-laws for dowry. In spite of the visa being granted to petitioner No.1, the respondent did not call her to the United States. After repeated requests, he sent the tickets but did not give her adequate amount to cover travel expenses. Thereafter, petitioner No.1 started residing with the respondent in the United States, where he continued to misbehave with her. As a matter of fact, petitioner No.2- minor

child was also beaten, causing Child Protection Services to intervene. The respondent was directed to stay in a hotel for three weeks and take anger management classes. It was only after many pleas that the respondent gave Rs. 1,75,000/- for treatment of petitioner No.2, who is suffering from Supra Ventricular Tachycardia.

3. Learned counsel for the petitioners, *inter alia,* contended that a perusal of the affidavit furnished by the respondent would indicate that he is working as a Technical Consulting Engineer with Cisco in the United States, and that he is earning about $3800 monthly. However, he has failed to furnish documents pertaining to HRA, TA, DA, E-SOPs as well as a certificate from his employer stating his designation and gross monthly income, as stipulated by the Hon'ble Supreme Court in ***Rajnesh vs. Neha (2021) 2 SCC 34.*** Moreover, the respondent has himself claimed that he is paying income tax at the rate of 35%. Therefore, reason dictates that he must falls within the income bracket of $2,31,251 to $5,78,725 p.a., as 35% income tax is only levied on persons falling within this range. He further places reliance on Annexure A-1, annexed with CRM-40455-2023, which indicates tax rates and the income brackets they are applicable to. The respondent has also failed to annex his Income Tax Returns for the last three years. Curiously, during the proceedings before the learned Family Court, the petitioners could only bring forth a copy of the respondent's Income Tax Return for the year 2006, which showed his income to be $89,579/- p.a. Finally, the respondent only began appearing through counsel, after 5 years of filing the present revision petition, on the orders of this Court, once it was discovered that he has issued power of attorney to his father to file for divorce against petitioner No.1.

4. Having heard learned counsel for the petitioners and after perusing

the record with his able assistance, it transpires that the petitioners had moved an application seeking instructions to the respondent to furnish complete details qua his income, including perks, HRA, TA, DA, as envisaged by the Hon'ble Supreme Court in ***Rajnesh vs. Neha (supra).*** A notice qua the said application was issued to the respondent on 03.10.2023. However, there has been no representation on part of the respondent on 03.10.2023, 24.11.2023, 30.11.2023, 20.03.2024, 03.05.2024 and 23.07.2024. As such, in view of the fact that the matter has been pending since 2016 and the seemingly intentional and continuous absence of the respondent from the proceedings, this Court is left with no other option but to proceed with the case on merits.

5. Conspicuously, while 3 years of bank statements are required to be presented, the respondent's bank statements pertaining to his account at Wells Fargo Bank only stretches from 19.02.2021 to 26.01.2023 and the same qua his account at Bank of America stretches from 03.09.2021 to 17.02.2023. Moreover, the respondent has failed to provide a certificate from his employer stating his gross monthly salary and designation, Income Tax Returns from the required time periods as well as any perks and benefits arising out of the employment like travel allowance, house rent allowance, dearness allowance or stock options provided through Employee Stock Ownership Plan, which is especially prevalent in tech companies in the United States. As such, it is evident that the respondent has not furnished all the documents with his income and assets affidavit, as stipulated by ***Rajnesh vs. Neha (supra)***, wherein the following details are sought:

> ***"F. Details of Income of the Deponent***
> *1. Name of employer:*
> *2. Designation:*
> *3. Monthly income:*
> *4. If engaged in Government Service, furnish latest Salary*

Certificates or current Pay Slips or proof of deposit in bank account, if being remitted directly by employer
5. If engaged in the private sector, furnish a certificate provided by the employer stating the designation and gross monthly income of such person, and Form 16 for the relevant period of current employment.
6. If any perquisites, benefits, house rent allowance, travel allowance, dearness allowance or any other service benefit is being provided by the employer during the course of current employment.
7. Whether assessed to income tax? If yes, submit copies of the Income Tax Returns for the periods given below :
(i) One year prior to marriage
(ii) One year prior to separation,
(iii) At the time when the Application for maintenance is filed.
8. Income from other sources, such as rent, interest, shares, dividends, capital gains, FDRs, Post office deposits, mutual funds, stocks, debentures, agriculture, or business, if any, alongwith TDS in respect of any such income.
9. Furnish copies of Bank Statement of all accounts for the last 3 years" (emphasis added)

6. Further, the respondent has himself claimed to be paying 35% as income tax. However, it must be noted that the state of Texas does not impose state tax on individual income and the highest rate of income tax prevalent in the United States, qua federal income tax, is 37%. As such, the income of the respondent cannot be $45,600/- p.a., as claimed by him in his affidavit. For a person to be paying 35% of his salary as income tax, he must necessarily be earning upwards of $200,000/- p.a. Further still, no documents have been presented by the respondents to support his claimed income.

7. 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. A Co-ordinate bench of the Delhi High Court in ***Bharat Hegde vs. Saroj Hegde*** in ***C.M. (M) No. 40 of 2005*** *decided on 24.4.2007* has taken note of the same and opined that some guess work cannot be ruled out when concealment of income seems evident. The same has also been taken note of by the Hon'ble Supreme Court in ***Rajnesh vs. Neha (supra).***

8. 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 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.

9. 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."

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."*

10. While dealing with the issue of maintenance *in extenso,* a two Judge bench of the Hon'ble Supreme Court in ***Rajnesh vs. Neha (supra)***, 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 arder 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. A perusal of the impugned judgment passed by the learned Family Court, Gurgaon indicates that the income of the respondent has been assumed to be $89,597/- p.a., based on his Income Tax Return from the year 2006, and petitioner No.1 has been awarded Rs. 20,000/- per month while Rs. 15,000/-

per month has been awarded to petitioner No.2 as maintenance under Section 125 Cr.P.C. However, in view of the discussion above as well as the fact that petitioner No.2 suffers from Super Ventricular Tachycardia, this Court is of the considered opinion that the maintenance awarded to the petitioners deserves to be enhanced.

12. Accordingly, the present petition is allowed and the quantum of maintenance granted to petitioners is enhanced to Rs. 50,000/- per month each.

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

(HARPREET SINGH BRAR)
JUDGE

Reserved on :23.07.2024
Pronounced on : 26.07.2024
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(i) Whether speaking/reasoned Yes/No

(ii) Whether reportable Yes/No