



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

CRR(F)-1268-2024  
Date of decision: 01.10.2024

Vikas ....Petitioner

Versus

Monika ...Respondent

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

**Present:** Mr. Rajesh Sharma, Advocate  
for the petitioner.

**HARPREET SINGH BRAR, J. (ORAL)**

1. The present petition has been preferred against the impugned order dated 04.09.2024 passed by the learned Family Court, Bhiwani, under Section 125 of the Cr.P.C. vide which the interim maintenance of Rs.30,000/- per month was awarded to the respondent.

2. The marriage between the petitioner and respondent was solemnised on 18.07.2021 in accordance with Hindu rites and rituals. Out of this wedlock, no child was born. However, matrimonial dispute ensued between the couple and the respondent filed a petition under Section 125 Cr.P.C. seeking maintenance. The petitioner filed a reply and contested the claim made by the respondent. The learned Family Court vide order dated 04.09.2024 granted interim maintenance allowance of Rs.30,000/- per month in favour of the respondent. 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 respondent/wife is highly qualified and having BDS and MDS degrees in Dentistry and she is also co-author of a book which is being sold on Amazon

**CRR(F)-1268-2024****-2-**

and other major platforms. The petitioner has the liability to take care of his parents and his father has a serious heart condition as discernible from Annexure P-9 and the respondent has also made a similar prayer before the General Officer Commanding in Chief, seeking maintenance and petitioner has been saddled with 15% of his total pay and he is regularly paying the said amount.

4. 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.

5. 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.”*

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

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



CRR(F)-1268-2024

-4-

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.

8. While dealing with the issue of maintenance *in extenso*, a two Judge bench of the Hon'ble Supreme Court in **Rajnesh 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 -I 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."*

9. In view of the above, this Court finds no force in the arguments advanced by learned counsel for the petitioner as at this stage, only interim maintenance is granted to the parties which is subject to adjustment and the parties are yet to prove their respective claims by adducing evidence.

10. Having heard learned counsel for the petitioner and after perusing the record of the case, this Court is of the view that for making assessment of the actual income, only statutory deductions are to be excluded from the salary and any EMI being paid by the husband for repayment of loan, cannot be taken into consideration as laid down in the judgment of this Court passed in **'Mukesh Kumar Vs. Rekha Rani and another'**, 2018 (3) R.C.R. (Criminal)

135. Further, since the respondent-wife is already getting a maintenance allowance @ 15% per month, calculated from the petitioner's pay and allowances (including basic pay, Military Service Pay, DA etc.) as such, in view of the guidelines issued by the Hon'ble Apex Court in **'Rajnish v. Neha and another'** (2021) 2 SCC 324, the said maintenance allowance is required to be set off against the final maintenance amount to be awarded by the court below at the time of final disposal of the petition under Section 125 Cr.P.C. because as per the affidavit furnished by the petitioner-husband, declaring his assets and



CRR(F)-1268-2024

-6-

liabilities, he is drawing a gross salary of Rs.1,28,297/- per month and after deductions, his net income has been shown as Rs.75,518/- per month, whereas, the respondent-wife is entitled to 1/4th of the petitioner's salary as per the judgment of the Hon'ble Supreme Court passed in '**Kalyan Dey Chowdhary Vs. Rita Dey Chowdhary Nee Nandy**', AIR 2017 SC 2383.

11. In view of the above, the present petition is disposed of with a direction to the learned Principal Judge, Family Court, Bhiwani to decide the final maintenance under Section 125 Cr.P.C., strictly in accordance with law in terms of **Mukesh Kumar's case, Rajnesh's and Kalyan Dey Chowdhary's (supra)**. Further, liberty is granted to the petitioner to raise all the pleas, before the learned Family Court, taken in the present petition at the appropriate stage during the course of trial.

12. Pending CRM(s), if any, are also disposed of accordingly.

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

(HARPREET SINGH BRAR)  
JUDGE

01.10.2024

Neha

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