

CRR(F)-1521-2023 (O & M)
Date of decision: 17.09.2024

...PETITIONER

V/S

...RESPONDENT

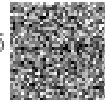
Present: Mr. Sandeep Godara, Advocate for
Mr. A.P.S. Rehan, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The petitioner is seeking modification in the order dated 12.09.2023 passed by learned Principal Judge, Family Court, Gurdaspur in maintenance petition bearing No. 125/204/2022 titled as ***Damini Vs. Sushil Kumar***, whereby, interim maintenance to the tune of Rs. 10,000/- per month only had been directed to be paid by respondent-husband.

2. Brief facts of the case are that the marriage of the petitioner-wife and respondent-husband was solemnized on 05.10.2019 in accordance with Hindu rites and ceremonies. However, no child was born from the said wedlock. Matrimonial dispute ensued between the couple and petitioner-wife filed a petition under Section 125 Cr.P.C. seeking maintenance. The respondent-husband filed a reply and contested the claim made by the respondent. The learned Family Court, Gurdaspur vide order dated 12.09.2023 awarded interim maintenance allowance of Rs. 10,000/- per month in favour of the petitioner-wife. Aggrieved by the same, petitioner-wife has preferred this revision petition seeking enhancement of interim maintenance.

3. Learned counsel for the petitioner-husband *inter alia* contends that

**CRR(F)-1521-2023 (O & M)**

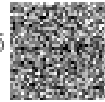
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respondent-husband is working as Constable in Border Security Force and his gross salary is more than Rs. 60,000/- per month and he, in his affidavit declaring assets and liabilities, has not made full disclosure, rather he has only mentioned his basic salary and learned Court below has awarded only Rs. 10,000/- per month as interim maintenance to the petitioner-wife. The respondent-husband has no liability and his father is also drawing pension. As such the amount of interim maintenance awarded by learned Court below is on the lower side and is not in consonance with the actual income of respondent-husband.

4. I have heard the learned counsel for the petitioner and gone through the case file with his able assistance.

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 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.

6. 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:



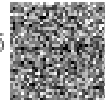
“3. Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing, and shelter to the deserted wife.”

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.”

7. 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.

8. 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)-1521-2023 (O & M)**

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.

9. 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;

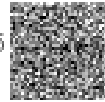
(iii) if the order passed in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding

(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 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."*

10. Having heard learned counsel for the petitioner and perusing the record, this Court finds no force in the arguments advanced by learned counsel for the petitioner as at this stage, the amount of maintenance awarded by learned Family Court below is only interim in nature subject to adjustment at the time of final disposal and parties are yet to prove their respective pleadings before the learned Family Court by adducing evidence in their support. However, learned Family Court below is directed to pass the final order strictly in accordance with law and only statutory deductions from the gross salary are to be excluded at the time of assessment of salary of the respondent-husband. Learned Court below has assessed the salary of the respondent-husband as Rs. 50,000/- per month and awarded only Rs. 10,000/- as interim maintenance in favour of petitioner-wife. Therefore, learned Family Court is directed to award the amount of maintenance at the time of final disposal of the case strictly in accordance with the ratio of law laid down by Hon'ble Supreme Court in ***Kalyan Dey Chowdhary vs. Rita Dey Chowdhary Nee Nandy AIR 2017 SC 2383***, wherein it has been held that wife is entitled to one fourth of the net salary of the respondent-husband.



CRR(F)-1521-2023 (O & M)

11. Accordingly, the present petition is hereby disposed of in aforesaid terms.

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

September 17, 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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