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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-144-2017 (O&M)
Reserved on: 20.11.2024
Pronounced on: 22.11.2024

Pushpa Panwar

... Petitioner

Vs.

Ashok Panwar

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

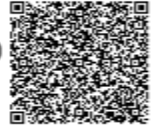
Present: Mr. Deepanshu Matya, Advocate
for the petitioner.

Mr. Rakesh Dhiman, Advocate and
Mr. Abhimanyu Kalsy, Advocate
for the respondent.

HARPREET SINGH BRAR, J. (ORAL)

CRM-45938-2024

1. This application has been filed under Section 528 of Bharatiya
Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking to place on record
affidavit of the respondent declaring his assets, income and liabilities along
with Annexure R-1 to R-12, in compliance of order dated 02.09.2024.
2. In view of the averments made in the application, same is allowed

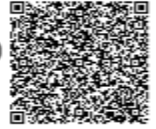


and the documents (Annexure R-1 to R-12) are taken on record.

CRR(F)-114-2017

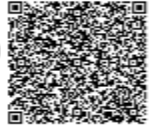
3. Present revision petition has been preferred for enhancement of the amount of maintenance as awarded vide impugned judgment dated 25.05.2016 passed by learned District Judge, Family Court, Gurgaon, vide which, the petition filed under Section 125 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') [*now Section 144 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS')*] was allowed and maintenance allowance of Rs.8,000/- per month was awarded to be paid to the petitioner.

4. The marriage between the petitioner and respondent was solemnized on 24.05.1989 according to Hindu rites and rituals and out of this wedlock, one son namely Vinay was born. However, matrimonial dispute ensued between the couple and the petitioner and her son filed a petition under Section 125 of Cr.P.C. (*now Section 144 of BNSS*) seeking maintenance. The respondent filed a reply and contested the claim made by the petitioner and her son. Learned Family Court, vide impugned judgment dated 25.05.2016, granted maintenance allowance of Rs.8,000/- per month in favour of the petitioner, however, the petition under Section 125 of Cr.P.C. (*now Section 144 of BNSS*) was dismissed as withdrawn on 10.09.2015. Aggrieved by the same, the petitioner has approached this Court seeking enhancement of the amount of maintenance.



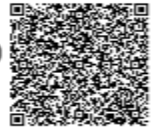
5. Learned counsel for the petitioner, *inter alia*, contends that the respondent receives pension from the Central Government, as he served as a Hawaldar in the Indian Army. After his retirement, the respondent started working as JBT teacher with Government School, Bhiwani on a monthly salary of about Rs.60,000/- per month. The petitioner is living in a rented accommodation and is unable to manage her expenses in the meager amount of Rs.8,000/- per month granted as maintenance. Moreover, salary of the respondent was increased by virtue of 7th Pay Commission, as it had been implemented w.e.f 01.07.2016, as such, the amount of maintenance granted to the petitioner deserves to be enhanced.

6. *Per contra*, learned counsel for the respondent submits that the petitioner had left the company of the respondent without any reasonable cause. The respondent had filed a petition under Section 9 of the Hindu Marriage Act, 1955 (for short 'HM Act'), but the petitioner refused to accept the summons. Having left with no other option, the respondent filed a petition under Section 13 of HM Act seeking divorce on the grounds of cruelty and desertion. The petitioner did not participate in the said proceedings and an *ex parte* divorce was granted by the concerned Court vide judgment and decree dated 07.04.2006. Thereafter, the respondent remarried and has one 17 years old son from the second marriage. Further, the respondent is retired from the Indian Army as well as the Education Department, Haryana. Not only he has



been paying maintenance at the rate of Rs.8,000/- per month to the petitioner, but is also maintaining his second wife and son. He has also purchased a 14 *marla* house for the petitioner by using the money from his GPF account, as such, she does not require enhanced maintenance to support her living expenses. Significantly, the petition under Section 125 of Cr.P.C. (*now Section 144 of BNSS*) was filed by the petitioner on 10.09.2014, about 08 years after grant of divorce. As far as the argument qua implementation of 7th Pay Commission is concerned, the same happened after passing of the impugned judgment. The petitioner has neither moved an application under Section 127 of Cr.P.C. (*now Section 146 of BNSS*) nor led evidence under Section 391 of Cr.P.C. (*now Section 432 of BNSS*) before this Court to prove the increase in salary.

7. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petition under Section 125 of Cr.P.C. (*now Section 144 of BNSS*) was filed by the petitioner and her son on 10.09.2014. However, the petition qua the son was withdrawn vide order dated 10.09.2015, as he was found to have attained majority. It appears that the respondent has retired from his job as a JBT teacher. As per his affidavit of assets, income and liabilities (Annexure R-1), the respondent receives Rs.34,386/- per month as pension for his service rendered in the Indian Army as well as Rs.30,935/- per month for his service rendered with the



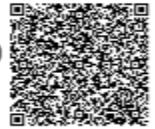
Education Department, State of Haryana. As such, his total monthly income is about Rs.65,321/- per month.

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. (*now Section 144 of BNSS*) 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. (*now Section 144 of BNSS*) 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.”

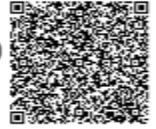
10. Further, a two-Judge Bench of the Hon'ble Supreme Court in



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.”

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

12. While dealing with the issue of maintenance *in extenso*, a two Judge bench of the Hon'ble Supreme Court in ***Rajnesh Vs. Neha and another, (2021) 2 SCC 324*** laid down the criteria for determining quantum of maintenance and issued the following directions:

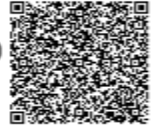
"III Criteria for determining quantum of maintenance

(i) The objective of granting interim/permanent alimony is to ensure that the dependant spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

82. *The factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife. Refer to ***Jasbir Kaur Sehgal v. District Judge, Dehradun and others (1997) 7 SCC 7***. Refer to ***Vinny Paramvir Parmar v. Paramvir Parmar (2011) 13 SCC 112***.*

83. *In ***Manish Jain v. Akanksha Jain (2017) 15 SCC 801***, this*

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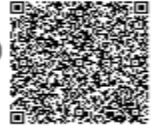
Court held that the financial position of the parents of the applicant-wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the Court should mould the claim for maintenance based on various factors brought before it.

*84. On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications. **Reema Salkan v. Sumer Singh Salkan (2019) 12 SCC 303.***

*(ii) A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. **Chaturbhuj v. Sita Bai (2008) 2 SCC 316.***

85. The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

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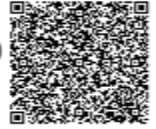
(iii) Section 23 of HAMA provides statutory guidance with respect to the criteria for determining the quantum of maintenance. Sub-section (2) of Section 23 of HAMA provides the following factors which may be taken into consideration: (i) position and status of the parties, (ii) reasonable wants of the claimant, (iii) if the petitioner/claimant is living separately, the justification for the same, (iv) value of the claimant's property and any income derived from such property, (v) income from claimant's own earning or from any other source.

(iv) Section 20(2) of the D.V. Act provides that the monetary relief granted to the aggrieved woman and/or the children must be adequate, fair, reasonable, and consistent with the standard of living to which the aggrieved woman was accustomed to in her matrimonial home.

(v) The Delhi High Court in **Bharat Hedge v. Smt. Saroj Hegde 40 (2007) DLT 16** laid down the following factors to be considered for determining maintenance:

- “1. Status of the parties.
2. Reasonable wants of the claimant.
3. The independent income and property of the claimant.
4. The number of persons, the non-applicant has to maintain.
5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.
6. Non-applicant's liabilities, if any.
7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.
8. Payment capacity of the non-applicant.
9. Some guess work is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.
10. The non-applicant to defray the cost of litigation.

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11. The amount awarded under section 125 Cr.PC is adjustable against the amount awarded u/s 24 of the Act.”

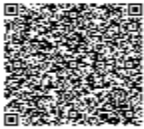
(vi) Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable.”

13. Moreover, the respondent has remarried and has his wife and minor son to maintain as well. A perusal of the impugned judgment passed by learned Family Court makes it evident that the Court below has duly considered the material placed before it for determining the quantum of maintenance. However, 7th Pay Commission was implemented w.e.f. 01.07.2016, i.e. after passing of the impugned judgment. Additionally, the respondent has now retired from service as a JBT teacher with the State Government. Admittedly, he is drawing a total pension of Rs.65,321/- per month. As such, it appears that the circumstances have changed significantly since passing of the impugned judgment.

14. In view of the facts and circumstances of the case, present petition is disposed of in the following terms:

- (i) The petitioner is granted liberty to file a petition under Section 127 of Cr.P.C. (now Section 146 of BNSS). If she chooses to exercise the said option, learned District Judge, Family Court, Gurgaon is directed to pass a fresh order, in accordance with the

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guidelines issued by the Hon’ble Supreme Court in ***Rajnesh***’s case (*supra*).

- (ii) In the meanwhile, the respondent shall continue paying Rs.8,000/- per month to the petitioner as maintenance under Section 125 of Cr.P.C. (*now Section 144 of BNSS*), in terms of impugned judgment dated 25.05.2016.

15. Needless to say, nothing observed hereinabove shall be construed to be an expression of opinion of this Court on the merits of the case, lest it may prejudice the trial. Learned Family Court is directed to decide the matter on its own merits, strictly in accordance with law.

16. All the pending miscellaneous application(s), if any, shall stand disposed of.

[**HARPREET SINGH BRAR**]
JUDGE

22.11.2024
vishnu

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