

CRR(F)-950-2019
CRR(F)-45-2020

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-950-2019
CRR(F)-45-2020
Date of decision: 05.06.2024

1.

VISHAL UPPAL . . . PETITIONER

V/s
JASPREET UPPAL AND ANOTHER . . . RESPONDENTS

2.

JASPREET UPPAL AND ANOTHER ...PETITIONERS

V/s
VISHAL UPPAL . . . RESPONDENT

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Keshav Pratap Singh, Advocate for the petitioner
in CRR(F)-950-2019 and for respondent
in CRR(F)-45-2020.

Mr. P.S. Sullar, Advocate for the petitioners
in CRR(F)-45-2020 and for respondents
in CRR(F)-950-2019.

SUMEET GOEL, J.

1. Vide this common judgment I shall decide two separate criminal revision petitions, bearing numbers CRR(F) 950 of 2019; and CRR(F) 45 of 2020, filed against a common order passed by the learned Family Court, Ambala, deciding the claim of interim maintenance, in a petition filed under Section 125 of the Code of Criminal Procedure seeking grant of maintenance. The parties in the

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present judgment are being referred to as per their status in CRR(F) 950 of 2019 to avoid any confusion due to any overlapping in both the petitions. The brief chronology of the facts giving rise to the filing of these two criminal revision petitions by the parties are:

2. The marriage between petitioner and respondent No.1 took place on 03.04.2010. However, no child was born out of wedlock of the petitioner with respondent No.1. The marriage between the petitioner and respondent No.1 was their second marriage, prior to their marriage on 03.04.2010, the petitioner had a daughter from his previous marriage; and respondent No.1 had a daughter from her previous marriage.

3. The relations between the parties are stated to have become strained since the beginning of marriage, however, the parties lived together as husband and wife for a period of more than eight years and eventually the parties got separated from each other on 04.08.2018. There are allegations and counter-allegations regarding cruel and atrocious conduct by the parties against each other. However, that part of the allegations between the parties not being germane to the adjudication of the present criminal revision petitions, this Court refrains from going into the veracity and truthfulness of the same, leaving it to be decided by the learned Family Court, at an appropriate stage, after taking into account the evidence to be led by the parties.

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4. After getting separated from each other, respondent No.1 (wife) and respondent No.2 (her son from previous marriage) filed a petition under Section 125 of the Cr.P.C. against the petitioner (husband), in the learned Family Court at Ambala, seeking the grant of maintenance.

5. The learned Family Court, Ambala vide its order dated 04.10.2019 held that the respondent No.2 being the son of respondent No.1 from her previous marriage is not entitled to claim any maintenance from the petitioner. However, the learned Family Court granted interim maintenance to respondent No.1, to be paid by the petitioner @ Rs.40,000/- per month from the date of filing of petition, being legally wedded wife.

6. Challenging the said order dated 04.10.2019 passed by the learned Family Court, the petitioner (husband) filed CRR(F)-950-2019 seeking setting aside of the said order with the averments that the respondents are not entitled to the grant of any maintenance. However, the respondents (wife and her son from previous marriage) filed CRR(F)-45-2020 seeking enhancement of the interim compensation already granted by the learned Family Court.

7. I have heard the learned counsel for the parties and have perused the record of the case carefully.

8. The petitioner has challenged the order of interim maintenance passed by the learned Family Court with the averments that the respondent No.1 is a quarrelsome and egoistic lady. The

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petition filed under Section 125 of Cr.P.C. is vague, containing wrong and false facts. The respondent No.1 left the company of the petitioner without any sufficient reason. Since the respondent No.2 fell into bad habits, the petitioner tried to discipline him, but the respondent No.1 thought that the petitioner was scolding him unnecessarily and therefore left the company of petitioner. She got a criminal case registered against the petitioner at Police Station Ambala Cantt. under Sections 498, 420, 406, 323 of IPC and at the time of grant of pre-arrest bail to the petitioner in said case an amount of Rs.2,70,000/- was paid by the petitioner to her. It is submitted that the respondent No.1 filed a wrong affidavit of her assets before the learned Family Court, withholding proper information about her income and assets. Rather, she mentioned wrong income of the petitioner in her affidavit. She has an FDR to the tune of Rs.6,00,000/-. She has equity and stock investment to the tune of Rs.4,50,000/-. She is an income tax assessee with income to the tune of Rs.2,00,000/- for the years 2016-17 and 2017-18.

9. It is submitted that the petitioner is doing private job with a salary of Rs.85,000/- per month, and his monthly expenditure is Rs.82,600/-. He has old aged parents and young daughter to look after, who are fully dependent upon him. The learned Family Court wrongly construed the salary of the petitioner to be Rs.1,61,921/- for the month of May. Whereas, as a matter-of-fact, the petitioner got yearly bonus from his employer in the month of May, 2019 that is

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why he got said amount, otherwise, his salary is less. The respondent No.1, being a skilled and educated lady, is capable to maintain herself, with qualification of M.A. B.Ed. and STET to her credit.

10. On the contrary, the respondents in their separate criminal revision petition have prayed for the modification of order passed by the learned Family Court, seeking enhancement of maintenance amount to the tune of Rs.1,00,000/- per month. It is submitted that the learned Family Court erred in disentitling respondent No.2 from seeking any maintenance from the petitioner. Respondent No.2 was adopted by the petitioner as a son and respondents No.2 also considered the petitioner as his father. The documents of respondent No.2 i.e., Aadhar Card, School Admission Form, School Leaving Certificate etc. bears the name of petitioner as father. As such, respondent No.2 ought to have been granted maintenance by the learned Family Court. Respondent No.1 being educated lady is entitled to grant of maintenance commensurate with her status. The learned Family Court, while passing the impugned order has wrongly assessed the salary of the petitioner on the lower side, whereas, he is earning more than Rs.2 lacs per month.

11. The learned Family Court after elaborately dealing with the submissions made on behalf of both the parties deal with the aspect of assessment of income of the parties on the basis of the affidavits of assets and liabilities filed by them as well as the other relevant documents in the shape of account statements, Income Tax

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Returns, etc. Perusal of the impugned order shows that the learned trial Court has undertaken a painstaking exercise in evaluating the income of the parties. After going through the income tax returns of the petitioner for the year 2016-17, 2017-18 and 2018-19, the learned Family Court held that his gross total income is Rs,11,01,124/- and the tax payable is 94,848/-. The exempted income is Rs.5500/- meaning thereby annual income of petitioner is Rs.10,11,776/- i.e. approximately Rs.84,315/- per month. The argument advanced on behalf of the petitioner that the learned Family Court miscalculated his income by taking into consideration his salary for the month of May, 2019 is wholly ill founded. Perusal of the impugned order makes it clear that the May, 2019 salary of the petitioner is not the basis of calculation of his monthly salary by the learned Family Court. Rather, the learned Family Court has assessed the monthly salary of the petitioner on the basis of wholesome material available on record of the case. His monthly salary as assessed by the learned Family Court is approximately Rs.84315/- while appreciating the May, 2019 salary of the petitioner, wherein it is alleged that he received his annual bonus, the learned Family Court has only held that there seems to be some enhancement of his salary. This finding of the learned Family Court cannot be faulted as the annual bonus earned by the petitioner certainly forms part of his salary only.

12. No doubt, the learned Family Court in the impugned order has held that respondent No.1 on the basis of the material

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adduced by the petitioner on record of the case is not completely without resources and that she has not disclosed her financial health truthfully, however, it was held that still she is not possessed of resources which would be sufficient for her sustenance. The FDR of Rs.6,00,000/- in the name of respondent No.1 and the interest earned thereupon in view of the peculiar facts of the case cannot be termed as sufficient amount for respondent No.1 to maintain herself at par with the standard of the petitioner. The finding returned by the learned Family Court at the nascent stage of deciding the interim maintenance, being result of some element of estimation, also cannot be faulted, as the entitlement of the respondent to receive maintenance cannot be based upon exact arithmetical calculations at such a stage. It goes without saying that an order granting interim maintenance is subject to final adjudication on the main petition and the interim maintenance granted during the pendency of the proceedings is only a provisional maintenance subject to final determination to be made on the conclusion of the proceedings.

13. Coming to the aspect of challenge made to the part of the impugned order passed by the learned Family Court holding that respondent No.2 is not entitled to claim maintenance from the petitioner, the respondent No.1 has claimed that respondent No.2 is adopted by the petitioner. However, no document evidencing the adoption of respondent No.2 by the petitioner has been placed on record of the case. The Aadhar Card, School Admission Form, and

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School Leaving Certificate of respondent No.2, by virtue of bearing the name of petitioner as father of respondent No.2 cannot be termed as proof of valid adoption of respondent No.2 by the petitioner. The averments made in criminal revision petition qua the adoption of respondent No.2, bereft of any details thereof, either by any cogent material or pleadings before the learned Family Court cannot be made basis for grant of maintenance to respondent No.2 by the petitioner. The date, time and place of the alleged adoption, the manner of said adoption and the ceremonies, if any, performed during that adoption are conspicuously missing in the case. As such the learned Family Court has correctly relied upon the judgment passed by the Hon'ble Gujarat High Court in the case of ***Manjulaben Prakashbhai Sarvajya v. State of Gujarat (Gujarat) 2016(2) R.C.R. (Criminal) 441***; wherein it was held as under :-

“48. I am dealing with a statute which is secular in nature and is not controlled as such by the provisions of the Hindu Adoptions and Maintenance Act, 1956, although it would be apposite to keep those provisions in view while considering the petition under Section 125 of the Code. The language used in Section 125 of the Code is plain and unambiguous. The words "legitimate or illegitimate" as used in Section 125 must, therefore, be presumed to carry its plain literal meaning in the absence of any evidence that it was intended to mean something else or include a stepchild also.

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49. It is not open to this Court to supply the omission by extending the meaning of the word of the words "legitimate or illegitimate child" in the guise of interpretation by analogy or implication only because this Court feels that it will be in conformity with the principles of social justice and equity."

14. In view of my above findings in the matter, no fault or legal infirmity is found in the impugned order, dated 04.10.2019 passed by the learned Family Court, Ambala and as such the same is upheld. Both the above-mentioned criminal revision petitions filed against the said order are accordingly dismissed.

15. Needless to state herein that the observations made hereinabove shall not be construed as opinion on merits of the case.

16. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

June 05, 2024
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No