

**IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH****113****CRR-F-1327-2024(O&M)****Date of order: 21.10.2024****Rakesh Chhonkar @ Rakesh Kumar****.....Petitioner(s)****Vs.****Bhavna****.....Respondent(s)****CORAM:****HON'BLE MS. JUSTICE NIDHI GUPTA****Present:-****Mr. Rakesh Gupta, Advocate
for the petitioner.*************Nidhi Gupta, J.**

Challenge in the present petition filed by the husband is to the order dated 21.08.2024 passed by the learned Principal Judge, Family Court, Camp Court at Ferozepur Jhirka, whereby in a proceeding under Section 125 Cr.P.C., the petitioner has been directed to pay interim maintenance of Rs.7,000/- per month to the respondent/wife from the date of filing of the application till disposal of the main petition.

Learned counsel for the petitioner submits that the above said maintenance is on higher side and has been passed by the learned Family Court without appreciating the facts of the case. It is submitted that the petitioner has very meager income of only Rs.5,000/- p.m. which has been duly proved on record. The learned trial Court itself has come to conclusion that the respondent has failed to adduce any evidence to prove that the petitioner is working in B.K. Hospital, Faridabad and getting salary of Rs.35,000/-. It is submitted that despite these specific



findings, the petitioner has been directed to pay the above said interim maintenance.

It is submitted that in passing the impugned order, learned trial Court has also failed to take into consideration the fact that the respondent has higher qualification than the petitioner in-as-much as the respondent is M. Com whereas the petitioner is merely graduate having qualification of computer. It is stated that the status of the petitioner is below poverty line which is clear from his affidavit. The petitioner is only receiving honorarium of Rs.5,000/- p.m. Apart from this, he has no income. Moreover, it is the respondent herself who had left the company of the petitioner. As such, she is not entitled to maintenance.

No other argument is made on behalf of the petitioner.

I have heard learned counsel for the petitioner and perused the case file in great detail.

Perusal of record of the case shows that the petitioner was married to the respondent on 11.12.2020. Due to matrimonial discord, the parties started living separately since 31.01.2022. The present petition under Section 125 Cr.P.C. came to be filed by the respondent on 10.10.2022. All the assertions made by the respondent to the effect that the petitioner is working in B.K.Hospital, Faridabad on a salary of Rs.35,000/- p.m.; or the petitioner has agricultural income of Rs.15,000/-; or that the petitioner is a Computer Operator, have been denied by the petitioner. Even a petition under Section 13 of the Hindu Marriage Act has been filed.



It has been stated by the petitioner that he is merely graduate in Computer and working on an honorarium of Rs.5,000/-p.m. as is evident from honorarium slip dated 21.11.2022 (Annexure P-3). Perusal of the Affidavit of Income, Assets and Liabilities (Annexure P-1) filed by the petitioner before the learned Family Court reveals that the petitioner has shown his educational qualification as a graduate. In his professional qualification, the petitioner has himself stated that he is a Computer Operator, and his occupation is that of Computer Operator. The fact whether the petitioner is working in B.K. Hospital, Faridabad or whether he has agricultural income or not is a matter of evidence and can only be determined after trial. It is also relevant to note that the petitioner had shown his monthly income only to be Rs.5,000/- p.m. however he has shown his monthly expenses to be about Rs.25,000/- p.m. There is nothing whatsoever on record to indicate as to how the petitioner is meting his expenses as his income is only Rs.5,000/- p.m. Even a perusal of the honorarium slip dated 21.11.2022 (Annexure P-3) reveals the same to be for the period of July 2022 to September 2022 and has been issued by the Principal Medical Officer, Civil Hospital, Faridabad. However, the said honorarium slip reveals that the said certificate has been issued only for loan purpose and the Department will not be responsible for any recovery and repayment of loan.

It is by now a settled trend that in matters of maintenance such as the present one, the husband tries to depict his income on the lower side, whereas the wife attempts to show an exaggerated income of the husband. The truth usually lies somewhere in



between. In any event, these are all matters of evidence. The truth or otherwise of the allegations and counter-allegations made by both the parties can only be determined upon leading of evidence. As such, it is neither desirable nor feasible for this Court to interfere at this stage, let alone return a finding in respect of the contrary assertions made by either of the parties.

However, in view of the admitted relationship between the parties, the petitioner cannot be absolved of his moral and legal responsibility of maintaining the respondent. In this regard judgment of the Hon'ble Supreme Court in "**Shamima Farooqui v. Shahid Khan**" (SC): Law Finder Doc Id # 661024, is relevant wherein it is held as follows: –

"B. Criminal Procedure Code, 1973 Section 125 Grant of maintenance to wife - Plea of husband that he was not doing job and had no means to pay cannot be accepted - These are only bald excuses - Held :-

(i) If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife.

(ii) It is the obligation of the husband to maintain his wife - He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning."

Admittedly, the petitioner does not suffer from any physical infirmity and is healthy and able bodied.

Even otherwise, the grant of interim maintenance is a temporary measure of social justice to help the abandoned wife and children to tide over the difficult period. It is oft-repeated and no longer res integra that Section 125 Cr.P.C. is a measure of social justice to protect abandoned wife, children and parents from vagrancy and destitution. In



“Kirtikant D. Vadodaria v. State of Gujarat & Another” (1996) 4 SCC 479,

the Hon’ble Supreme Court has 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...”

Again, 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, held 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...”

Thus, the purpose of Section 125 Cr.P.C. is to protect abandoned wives who are unable to maintain themselves from vagrancy and destitution, to grant social justice to a destitute woman, child, or infirm parents. Moreover, in view of the admitted relationship between the parties, the petitioner cannot escape his responsibility to maintain the respondents.



Accordingly, I find no ground is made out that calls for interference in the impugned order. The present petition is **dismissed**.

Pending application(s) if any also stand(s) disposed of.

However, nothing stated hereinabove shall be construed as an expression of opinion on the merits of the matter.

21.10.2024
Divyanshi

(Nidhi Gupta)
Judge

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