

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

302 (2 cases)

1. CRR(F)-1717-2023 (O&M)

Ruchi Sharma and others ...Petitioners

Versus

Harsh Bharadwaj ...Respondent

2. CRR(F)-1691-2023 (O&M)

Harsh Bharadwaj ...Petitioner

Versus

Ruchi Sharma and others ...Respondents

Date of decision: 08.04.2024

CORAM:- HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Kunal Dawar, Advocate
for the petitioners in CRR(F)-1717-2023;
for the respondents in CRR(F)-1691-2023.

Ms. Deepali Verma, Advocate
for the petitioner in CRR(F)-1691-2023;
for the respondent in CRR(F)-1717-2023.

MANISHA BATRA, J. (Oral)

1. This common order shall dispose of above mentioned two revision petitions as the order impugned therein is the same.
2. Both the above mentioned revision petitions have laid challenge to the order dated 16.09.2023, passed by the Principal Judge, Family Court, Faridabad (*for short 'Family Court'*) in maintenance petition bearing No. MNT/431/2020, titled as *Smt. Ruchi Sharma and others vs. Harsh*

Bharadwaj, whereby while denying the interim maintenance under Section 125 Cr.P.C. to petitioner No. 1-wife, the minor children of petitioner No. 1 and the respondent have been ordered to be granted interim maintenance to the tune of Rs. 25,000/- per month each. By way of the first petition, the petitioner-wife is praying for grant of interim maintenance for herself and the minor children are praying for enchancement of the amount of interim maintenance so granted. Whereas, by way of the second petition, the petitioner-husband is praying for setting aside the impugned order, whereby the minor children have been granted interim maintenance by the Family Court.

3. For the sake of continuity and coherence, hereinafter the parties shall be referred to as per their original nomenclature as given in main petition before the Family Court.

4. Brief facts of the case relevant for the purpose of disposal of the present case are that petitioner No. 1-wife along with her minor children has filed the aforementioned maintenance petition under Section 125 Cr.P.C. on the ground that they have been thrown out of the matrimonial home by the respondent, who had been misbehaving with her and subjecting her to cruelty on account of demand of dowry. It was also alleged that the respondent was working with a reputed company i.e. DXC Technologies Pvt. Ltd. and was drawing gross salary of Rs.2 Lacs approximately per month at the time of filing of the petition, whereas petitioner No. 1 and her minor children were unable to maintain themselves. Accordingly, by way of filing the aforesaid maintenance petition, they have prayed for grant of maintenance. An application for grant of interim maintenance had also been filed and vide impugned order dated 16.09.2023, the respondent was

directed to pay a sum of Rs. 25,000/- per month each to his two minor children i.e. petitioner Nos. 2 and 3 as interim maintenance from the date of filing of the application till the date of final disposal of the petition or till the date when they would attain majority. However, the aforesaid application was dismissed qua petitioner-wife as already mentioned. Feeling dissatisfied, both the parties have filed these revision petitions.

5. Learned counsel for the petitioners has vehemently argued that the impugned order is liable to be set aside to the extent, to which, the Family Court had declined the prayer made by petitioner No. 1 to grant interim maintenance and is further liable to be modified to the extent, to which, the amount of maintenance to tune of Rs. 25,000/- per month was directed to be paid to each of minor petitioner Nos. 2 and 3 as this amount deserves to be enhanced. He has argued that so far as petitioner Nos. 2 and 3 are concerned, regular expenses for their food, clothing, medicines, education, coaching classes or for joining any sport to compliment their basic education are required to be regularly incurred and that too at par with the financial status of the respondent, who was earning a salary of Rs. 2 Lakhs per month at the time of filing of the petition. It is, therefore, argued by learned counsel for the petitioners that the amount of interim maintenance as directed to be paid to petitioner Nos. 2 and 3 deserves to be enhanced to a sum of Rs. 40,000/- per month each minimum for their proper education as well as for meeting with their day to day requirements.

6. It is further submitted by learned counsel for the petitioners that so far as the order passed by the Family Court declining the payment of any maintenance to petitioner No. 1 is concerned, the same is not at all sustainable in the eyes of law as though very fairly the petitioner No. 1 has

admitted that she is earning an amount of Rs.15,000/- by working in Health Buddy and has been fetching rental income of Rs. 22,500/- per month from two apartments, owned by her at Bengaluru, after deducting Rs. 5,000/- as monthly maintenance for those flats but the amount so earned by her cannot be stated to be sufficient for her own maintenance, what to talk about meeting with the unforeseen expenses while taking care of the minor children of the parties. Therefore, it is argued that the impugned order is liable to be set aside to that extent and she deserves to be paid interim maintenance by the respondent. In this regard, learned counsel for the petitioner has placed reliance upon ***Kamlesh @ Kavita vs. The State of Uttar Pradesh and another : 2018 (2) RCR (Criminal) 816, Sunita Kachwaha vs. Anil Kachwaha : 2014 (4) RCR (Criminal) 831, Sandeep Bansal and another vs. Niharika and another : 2019 (3) RCR (Criminal) 715 and K. Sivasankara Boopathy vs. Shanti and others : 2011 (4) RCR (Criminal) 100.***

7. *Per contra*, learned counsel for the respondent has argued that the impugned order is liable to be set aside to the extent to which, he has been directed to pay interim maintenance of Rs. 25,000/- per month each to petitioner Nos. 2 and 3 as he is no more working with the DXC Technologies Pvt. Ltd. and was compelled to resign from his services keeping in view the fact that he has been harassed by petitioner No. 1 by dragging him into several litigations and has not been able to pay attention to his job. It is submitted that he is unemployed and is dependent upon his parents and, therefore, is not in a position to pay any maintenance to minor petitioner Nos. 2 and 3.

8. With regard to contention as raised by petitioner No. 1 that she

is entitled to receive maintenance from him, it has been strenuously argued by his counsel that petitioner No. 1 is a highly qualified person, being an MBA. She owns two apartments in Bengaluru and is also holding a high position in the company run by her father, from where she is fetching monthly income of Rs. 2 Lakhs per month. She is also fetching rental income of Rs. 80,000/- per month from the apartments owned by her and is not at all financially dependent upon anybody. Rather it is herself only, who is obliged to maintain petitioner Nos. 2 and 3, who are living with her since the respondent is unemployed now. With these broad submissions, it is urged that the petition filed by the petitioners are liable to be dismissed, whereas the petition filed by the respondent deserves to be allowed as he is neither financially capable of maintaining the minor petitioners nor is liable to pay any maintenance to petitioner No. 1.

9. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record carefully.

10. There is no dispute about the fact that the petitioners are wife and minor children respectively of the respondent and are living separately from him. The parties have levelled allegations/counter allegations against each other. Though the sanctity and legal effect of the allegations as levelled by the parties can be determined only on the basis of thorough assessment of the evidence, which is yet to be led by the parties but at this prefatory juncture, the factors which are to be noticed are that petitioner No. 1 and the respondent are well educated persons. Admittedly, at the time of filing of the petition under Section 125 Cr.P.C. by the petitioners, the respondent was drawing a salary of about Rs. 2 Lakhs per month by working in a reputed company. His claim is that he has been compelled by petitioner No. 1 to

resign from the post of IT Manager as on 25.08.2022 and ever since then, he himself is dependent upon his parents. He has claimed that petitioner No. 1 is holding a high post in the company of her father and is earning good income, apart from earning rental income from the apartments, owned by her at Bengaluru.

11. The well settled proposition of law is that the husband is under an obligation to maintain his wife and children irrespective of the fact whether he has property or no property as it is considered as an important duty and solemn obligation of the husband to maintain his wife and children and he cannot say that he is unable to maintain them due to financial constraints, so far he is capable of earning. The provisions of Section 125 Cr.P.C. is a measure of social legislation and is to be construed liberally for the welfare of the benefit of the wife and children. Hon'ble Supreme Court in an authoritative pronouncement cited as ***Rajnish v. Neha & Ors. : 2021 (2) SCC 324*** has laid down various guidelines for determining the quantum of maintenance by observing that 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. The factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependant 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. It has also been well settled that the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependant 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. Reliance can also be placed upon ***Manisha Jain vs. Akanksha Jain : (2017) 15 SCC 801***, wherein Hon'ble Supreme Court had observed that 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 and the child are able to maintain themselves with reasonable comfort.

12. In the instant case, the respondent is an able bodied young man. Though, he has placed on record an additional affidavit to show that he had resigned from the post of IT Manager from the company, wherein he was working as on 25.08.2022 and is himself dependent upon his parents but he is presumed to be capable of earning sufficient money to maintain his wife and children and in my considered opinion, he cannot say that he is not in a

position to earn or is dependent upon his own parents. It cannot be stated that he is unable to maintain his family and discharge his legal obligations for the reasons beyond his control. At the same time, it may also be mentioned that the obligation of the respondent, being husband/father to pay maintenance to his wife/children stands at a higher pedestal than the wife. Reference in this regard can be made to ***Shamima Farooqui vs. Shahid Khan : AIR 2015 Supreme Court 2025***, wherein similar observations were made. The contentions as raised by learned counsel for the respondent with regard to his liability to pay maintenance to petitioner Nos. 2 and 3 are that since he was unemployed at the time of passing of the impugned order, whereas the petitioner No. 1 was proved to be earning a good amount of money, therefore, the Family Court was required to proportionately balance the expenditure qua their children between petitioner No. 1 and himself as per their income, instead of putting entire burden on him. In paragraph No. 10 of the revision petition of the husband, he has given a tabular form showing that the income of her wife was Rs. 1,24,248/- per month. Learned counsel for the respondent has referred to ***Padmja Sharma vs. Ratan Lal :AIR 2000 Supreme Court 1398***, wherein it was held that when both of the husband and wife are earning, they are obliged to contribute in the maintenance of children in the same proportion.

13. On perusal of the impugned order, it is revealed that the respondent had filed three affidavits qua his income. In the affidavit filed on 09.03.2022, he admitted his monthly income to be Rs. 1,70,000; in the affidavit dated 30.05.2022, he mentioned his monthly income as Rs. 1,81,000/- fetched by working as Senior Manager in Mouser Electronics and in the third affidavit filed on 20.02.2023, he claimed that he had resigned

from his job on 10.02.2023. The Family Court observed that in the ITR of the respondent for the years 2020-21, his annual gross income was mentioned to be Rs. 20,83,833/-. The respondent might have resigned from his job on 10.02.023 as claimed by him, however, it does not absolve him from his liabilities to maintain his children. At the time of filing of application for grant of interim maintenance till 10.02.2023, the respondent was earning handsome amount of money, so much so that his annual income was about Rs. 21 Lakhs, as per his ITR for the years 2020-21. Petitioner Nos. 2 and 3, being his minor children, are certainly entitled to be maintained by the respondent with the same comfort and status, which they were having while they were living with him. Of course, the purpose of directing the respondent to pay maintenance to his children is not to oppress him but petitioner No. 1 is certainly entitled to receive that much amount of maintenance, which is reasonable and realistic and can neither be considered as unbearable for the respondent nor can be stated to be so meager that it amounts to dragging the minor petitioners to penury. The minor petitioners were certainly accustomed to a good standard of living while staying with the respondent. The amount, which has been directed to be paid by the respondent to them, cannot be stated to be exorbitant while taking into consideration their day to day expenses, which obviously include their fee, clothing, medical expenses, education, coaching classes and several other extra curricular activities but at the same time, this amount of Rs. 25,000/- per month, directed to be paid by the respondent, is just, reasonable and realistic keeping in view the fact that petitioner No. 1 with whom they are living is also proved to be fetching some income as is expected to share/contribute some of their expenses. More so, on the basis of the

evidence to be led before the Family Court with regard to the exact income of the respondent and petitioner No. 1, the final amount of maintenance can be assessed accordingly as the amount so directed to be paid to them is by way of interim maintenance only. As per discussion made above, it is held that the prayer made by the minor petitioners, seeking enhancement in the amount of interim maintenance, and the prayer made by the respondent for setting aside the impugned order do not deserve to be accepted at this stage, as the Family Court, while taking all these facts and circumstances of the case into consideration, had passed the impugned order for grant of maintenance @ Rs. 25,000/- per month each to petitioner Nos. 2 and 3 and no illegality or infirmity can be found in the order so passed. Accordingly, the prayers made by the minor petitioners as well as respondent to this extent are hereby declined.

14. Now coming to the claim of petitioner No. 1 for directing the respondent to pay maintenance to her. The Family Court had observed that she was not entitled to receive any maintenance from the respondent as it was not made out that she was unable to maintain herself. Admittedly, she is an MBA. She herself has admitted that she was earning an amount of Rs. 15,000/- per month and was also fetching rental income to the tune of Rs. 27,500/- per month. She is also having some deposits in the form of FDR in two different banks. The claim that she was having two apartments in Bengaluru had also not been specifically denied by her. Though, in the affidavit filed by her, she had shown her income to be much less and it is only on the basis of the evidence to be led by the parties that any observation as to her income can be made by the Court concerned and not at this stage, but it apparent that by denying to grant of any interim maintenance to

petitioner No.1, she is not going to be reduced to destitution or vagrancy. No doubt, the claim of petitioner No. 1 to seek maintenance cannot be denied on the ground that she is capable of earning or even that she is earning as she is entitled to maintain same standard of living, which she was accustomed to in her matrimonial home but her minor children have been held entitled to receive a reasonable amount of money for their interim maintenance. The income of petitioner No. 1 cannot be stated to be insufficient for her reasonable wants and subsistence at this stage. Therefore, it is held that the order passed by the Family Court thereby declining to pay any interim maintenance to her can also not be stated to be suffering from any illegality, much less infirmity.

15. With these observations, it is held that the findings given by the Family Court on this point also deserve to be upheld and do not warrant any interference by this Court. Accordingly, both the petitions are dismissed.

16. Let a photocopy of this order be placed upon the file of the connected case.

08.04.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>