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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-1331-2022 (O&M)
Date of decision: 19.11.2024

Anu Arora and others

... Petitioners

Vs.

Sandeep Arora

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Lupil Gupta, Advocate,
Mr. Hritik Sharma, Advocate,
Mr. Simranjot Singh, Advocate
for the petitioners.

Mr. Yagsimant Attri, Advocate
for the respondent.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been preferred against the impugned order dated 28.10.2022 passed by learned Principal Judge, Family Court, Mansa, Camp Court, Budhlada, vide which, while dismissing 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,

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2023 (for short 'BNSS')] qua petitioner No.1-wife, maintenance of Rs.10,000/- per month each was awarded to be paid to petitioners No.2 & 3.

2. The marriage between petitioner No.1 and the respondent was solemnized on 20.04.2006 according to Hindu rites and rituals. Out of this wedlock, two children; one daughter and one son i.e. petitioners No.2 & 3, respectively, were born. However, matrimonial dispute ensued between the couple and the petitioners filed a petition under Section 125 of Cr.P.C. (*now Section 144 of BNSS*) seeking maintenance of Rs.25,000/- per month. The respondent filed a reply and contested the claim made by the petitioners. Learned Family Court, vide impugned order dated 28.10.2022, while dismissing the petition under Section 125 of Cr.P.C. (*now Section 144 of BNSS*) qua petitioner No.1, granted maintenance allowance of Rs.10,000/- per month each in favour of petitioners No.2 & 3. Aggrieved by the same, the petitioners have approached this Court by filing the present petition.

3. Learned counsel for the petitioners, *inter alia*, contends that learned Family Court fell into grave error by not awarding any maintenance to petitioner No.1, while invoking the provisions of Section 125(4) of Cr.P.C. (*now Section 144(4) of BNSS*) without there being any evidence in this regard. Learned counsel for the petitioners refers to para No.13 of the impugned order and submits that petitioner No.1, in her cross-examination, admitted that she is ready to live with her husband even today and in spite of such evidence

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available on record, learned Family Court concluded that she left the company of the respondent-her husband without any justifiable cause. Further, income of the respondent is Rs.7.00 lacs to Rs.10.00 lacs per annum as per the Income Tax Returns filed by him.

4. *Per contra*, learned counsel for the respondent submits that petitioner No.1, in her cross-examination, admitted that for her daily needs, the respondent brings the household items required by her from the market on her request. Further, no question was put to the respondent with regard to neglecting to maintain petitioner No.1 or his refusal to keep her in her matrimonial home.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, this Court finds force in the arguments advanced by learned counsel for the petitioners.

6. 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.

7. 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.”

8. 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

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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.”

9. 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.

10. 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.

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11. 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:

"VI Final Directions

130. In view of the foregoing discussion as contained in Part B - 1 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

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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 order 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."

12. For a ready reference, Section 14 of the Family Courts Act, 1984 is reproduced as under: -

“14. Application of Indian Evidence Act, 1872.-

A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist

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it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (1 of 1872).”

13. A perusal of Section 14 of the Family Courts Act, 1984 indicates that rigor of Indian Evidence Act, 1872 are not applicable in family law and in spite of the fact that petitioner No.1 has shown her willingness to stay with the respondent, learned Family Court, while passing the impugned order, denied to grant any maintenance to her and it is not comprehensible how she has been denied maintenance by invoking the provisions contained in Section 125(4) of Cr.P.C. (now Section 144(4) of BNSS). There is nothing on record to remotely suggest that petitioner No.1 left the company of the respondent without any justifiable cause. It was specifically pleaded by petitioner No.1 that a panchayat was convened for resolving the dispute, however, the respondent did not agree to keep and maintain her and her minor children, till his demand of Rs.2.00 lacs is fulfilled.

14. Keeping in view the totality of facts and circumstances of the case at hand, this Court is of the opinion that petitioner No.1 is also entitled to receive maintenance from the respondent.

15. Accordingly, the present petition is partly allowed and the respondent is directed to pay Rs.10,000/- per month to petitioner No.1 from the date of filing of the petition under Section 125 of Cr.P.C. (now Section

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144 of BNSS).

16. Since petitioners No.2 & 3 have already been granted adequate amount of maintenance i.e. Rs.10,000/- per month each, the impugned order qua them requires no modification.

17. With the aforesaid observations and modification, instant revision petition is disposed of.

19.11.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

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