

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR-F-316-2024(O&M)

Date of order: 05.03.2024

Pooja Tyagi & Another

.....Petitioner(s)

Vs.

Amit Tyagi

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mrs. Savita Bhandari, Advocate and
Ms. Arshnoor Kaur, Advocate
for the petitioners.

Nidhi Gupta, J.

CRM-9719-2024:

This is an application under Section 5 of the Limitation
Act for condonation of delay of 128 days in filing the present petition.

After going through the contents of the application,
which is supported by affidavit of learned counsel for the petitioners, the
same is allowed and delay of 128 days in filing the present petition is
condoned.

MAIN CASE:

Prayer in the present petition is for modification of the
order dated 28.07.2023 passed by Id. Family Court, Sonipat whereby,
application filed by the petitioners under Section 127 Cr.P.C. has been
allowed and maintenance has been enhanced from Rs.15,000/- to
Rs.30,000/- per month.

2. Learned counsel for the petitioners inter alia submits that petitioner No.1 was married to the respondent on 22.11.2009. Petitioner No.2 was born out of this wedlock on 14.09.2010.

3. It is submitted that although vide the impugned order, the maintenance allowance of the petitioners has been enhanced from Rs.15,000/- to Rs.30,000/- per month, however, the same deserves to be enhanced even more on account of the fact that circumstances have changed since the year 2014 inasmuch as inflation has increased; there is increase in cost of living and higher demands of education, rental and ancillary fronts of growing child.

4. It is further contended that in the reply filed by the respondent to the petitioners' application under Section 125 Cr.P.C., he had concealed material facts in respect of his income. Even in affidavit of assets and liabilities, income of the respondent was not called for by the learned Court below. It is only subsequently that the petitioner got to know the actual status and facts regarding income of the respondent. As such, in view of the updated information on higher financial status and income and capacity to pay of the respondent, the maintenance of Rs.30,000/- ought to be enhanced even further.

5. It is stated that the respondent is a practicing professional Chartered Accountant. In fact, the respondent is not just a professional Chartered Accountant but is also a businessman. In this regard, Id. Family Court has ignored Annexure A filed by the petitioners along with their application. It is submitted that Annexure A is the list of 9 companies

that are under the control of the respondent. It is contended that in actual fact, the respondent is earning approximately Rs.1 crore from all the companies. However, this fact has been concealed by him before the learned Family Court.

6. It is further submitted that petitioner No.2 is suffering from severe disease due to which he has to be admitted to the hospital now and then.

7. No other argument is made on behalf of the petitioners.

8. I have heard learned counsel for the petitioners and perused the case file in detail.

9. Perusal of record of the case shows that previously, the petitioners had filed a petition under Section 125 Cr.P.C. against the respondent. In the said petition, a Settlement was arrived at between the parties wherein it was mutually agreed that the respondent would pay final maintenance of Rs.15,000/- per month to the petitioners. Accordingly, matter was disposed of vide order dated 14.10.2014. In the said petition, in compliance of direction of the Hon'ble Supreme Court in **"Rajnesh Vs. Neha & Another"** law Finder Doc ID # 1760057, both the parties had submitted their affidavits of assets and liabilities. As per the affidavit submitted by the respondent, only Rs.30,000/- was shown to be in his account. It is further undisputed that the respondent had placed on record his ITR in the said proceeding under section 125 CRPC. As such, in my view, the contention of the petitioners that the respondent had concealed his income, is not made out. Moreover, admittedly, the petitioner no.1 had lived in the matrimonial

home for four years. As such, it is again unlikely that she would not be aware of the income or the standard of living of the respondent. Thus, her contention that she has discovered the income and lavish standard of living of the respondent only subsequently, does not inspire confidence.

10. It is also to be noted that despite the fact that the maintenance amount of ₹15,000 per month was mutually agreed upon between the parties, yet, the learned Family court has, in a very fair manner, increased the said maintenance amount to ₹30,000 per month only in view of the factors of increased cost of living, and the fact that petitioner no.2 is now a teenager. The impugned order is thus, very just and fair.

11. It has also come on record that when the son of the parties/petitioner no.2 had fallen ill, the entire bill of around ₹1,00,000/- was paid for by the insurance company of the respondent. As such, the respondent is not running away from his duties as a father. As per the record, the respondent has filed petition under Section 13 of the Hindu Marriage Act, 1955 seeking divorce from petitioner no. 1 on grounds of cruelty; and also initiated proceedings for taking custody of the minor child/petitioner No.2. It has been alleged by the respondent that the petitioner no.1 had left the company of the respondent on 31.7.2013 and that she herself was not interested to live with the respondent.

12. It is also relevant that admittedly, the petitioner no.1 is a well qualified lady possessing the degree of B.Sc., M.Sc., B.Ed., MBA, and is also now an advocate. It is her own case that before marriage, the

petitioner no.1 was a government employee in Defence Accounts Department; and had also been offered a government job by the office of CAG, Rajkot. In such a situation, reference may be made to the judgment of the Karnataka High Court in Smt. Shilpashree J. M. Vs. Gurumanjunatha A.S., 2023 SCC OnLine Kar 36, wherein it has been held as under:-

“8. The records also disclosed that before marriage petitioner No.1 was working as is evident from her cross examination. Her cross examination also reveals that she was residing along with her mother. It is also evident from her admission that, even after her desertion she continued to stay in the rented house along with her mother itself and the allegation does establish that she was not interested to stay with respondent Nos. 2 to 4. It is an admitted fact that at the instance of the present petitioner No. 1, a separate house was taken on rent and now the petitioners i.e., wife and child are residing therein along with her mother, but she was reluctant to stay with her mother-in-law and unmarried sister-in-law. It is an admitted fact that respondent No. 1- husband is running provision stores. Further, he is having responsibility of taking care of his mother and unmarried sister. Admittedly, the petitioner No. 1 was working prior to her marriage and it is asserted that after marriage she resigned the said job. But, there is no explanation as to why she is incapable of working now. She is not supposed to sit idle and seek entire maintenance from her husband and she is also legally bound to make some efforts to meet her livelihood and she can seek only supportive maintenance from her husband”.

(Emphasis added)

13. In these circumstances, reference may also be made to judgment of High Court of Delhi in “Anju & Others Vs. Rinku Dahiya” 2023 SCC online DEL 6529, wherein it has been held as under:-

“11. We observe that in the present case, where both the spouses are equally qualified and are earning equally, interim maintenance cannot be granted to the wife under Section 24 of the Act. The object of Section 24 of the Act is to ensure that during the matrimonial proceedings under HMA either party should not be handicapped and suffer any financial disability to

litigate only because of paucity of source of income. The provision for interim/pendent lite maintenance has been made only to help either spouse to sail through the litigation expenses and also to ensure that they are able to live comfortably. The proceedings under Section 24 of the Act are not intended to equalize the income of both the spouses or to give an interim maintenance which is commensurate to maintain a similar life style as the other spouse as has been observed by this Court in the case of K.N. V. R.G MAT. APP.(FC) 93/2018 decided on 12.02.2019.”

14. No doubt, the above said judgment was in case of interim maintenance, however, the principal enunciated therein, as also the ratio decidendi thereof will apply to the present case also.

15. Perusal of impugned order shows that the learned Family Court has considered each and every allegation made on part of the petitioners in minute detail. It has been alleged by the petitioners that they discovered later that the respondent is running several companies as Director. Relevant findings of the learned Family Court in this regard are reproduced hereinbelow:-

“12. However, in the present petition, the entire stress in the pleadings and the arguments of the petitioner is upon the point that at the time of decision of the petition under section 125 Cr.P.C, the respondent concealed his income and that he was having a very lavish income, but the maintenance was granted on the lower side because of his concealment. It is not the case of petitioners that after passing of order of maintenance, the income of respondent has increased rather she alleges that the respondent from the very beginning was owner of certain companies, which are actually being operated/controlled by him and his monthly income is more than Rs.50 lakhs. Meaning, thereby, in the present petition under section 127 Cr.P.C, the petitioner no.1 actually seeks review of the order passed in section 125 Cr.P.C., which is not permissible. Therefore, the evidence led by the petitioners in this regard and

the arguments raised in this respect by learned counsel for petitioners are not much relevant.

13. Furthermore, the plea of petitioner in her pleadings that the respondent misled the court by concealing his actual assets and income in the affidavit filed by him in the proceedings under section 125 Cr.P.C and therefore, the maintenance was granted by the court on the lower side, which is insufficient and inadequate for the survival of petitioners, is also apparently misplaced. Had it been the case that the maintenance allowance in the petition under section 125 Cr.P.C was adjudicated on merits by the court, the plea of petitioners may be of some relevance. However, in the present case, it is undisputed that the amount of maintenance was mutually settled between the parties and the mutual settlement of the parties was only endorsed vide order dated 14 October 2014, passed by the court in the petition under section 125 Cr.P.C. Therefore, there was no question of respondent getting order of maintenance on the lower side by misleading the court. In fact, the petitioner no.1 in the present case is an educated and a highly qualified lady who is possessing the degrees of B.Sc, M.Sc, B.Ed, M.B.A and is also now an advocate, registered with the Bar Council of Punjab and Haryana. She has admittedly resided with the respondent as his wife, for a period of four years, as pointed out by Learned counsel for respondent. Therefore, it is difficult to believe that at the time of mutual settlement of maintenance allowance in the petition under section 125 Cr.P.C, she was not aware of the financial status and capacity of the respondent. Her plea that the respondent is living a lavish lifestyle, that he is having costly cars, that he lives like a prince and he travels to foreign countries for personal pleasure are such facts which must be in the knowledge of petitioner No.one since the beginning. In these circumstances, the plea raised by the petitioner do not appeal to the court.

14. In fact, petitioner no.1 alleges change of circumstances for filing the petition while submitting that after evidence of respondent was recorded in the divorce petition, she searched about the respondent on internet and came to know that he is director and shareholder in certain companies and that his e-mail ID and phone numbers are shown as the official communication of the said companies. However, the fact that the petitioner came to know some new facts by searching about the respondent cannot be termed as a 'change of

circumstance' for the purpose of section 127 Cr.P.C. On the other hand, the respondent has tendered reasonable explanations in his reply/arguments that being a professional chartered accountant, his mail ID and phone numbers are provided on the records of the company to which he provides professional services so that the concerned departments may contact him directly on behalf of company, in case of any query notice etc, which is a common practice. It is further rightly pointed out by Learned counsel for respondent that the petitioner has not been able to prove the receipt of any actual dividend by the respondent from the said companies except the one in which he is a partner (M/s SARS and Associates) nor there is any evidence of deduction of tax at source in this regard. The plea of respondent that simply because of being director in a company, no remuneration are allowed, also appears to be reasonable.

15.Learned counsel for petitioners has laid much stress on the argument that the respondent is doing business in the name of his maternal uncle Vinod and that he is purchasing properties in the name of his mother and is thereby having business income which he is diverting for purchase of properties in the name of his mother. However, it is admitted by the petitioners only in the course of arguments that the father of respondent, who was serving in Haryana State Electricity Board had purchased a house in Raj Mohalla, Sonipat and agricultural land and that on his death, certain amount was received by the mother of respondent. In these circumstances, the plea of respondent that his mother purchased properties from the money received after the death of his father and by selling the properties purchased by his father in his lifetime, appears to be quite reasonable. Further, there is no substantive evidence on record to show that the businesses/ companies in the name of maternal uncle of respondent namely Vinod or being run by the respondent only. Therefore, these arguments raised by Learned counsel for petitioner do not appeal to the court.

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17. As regards petitioner no.1 as well, though she has now acquired additional qualification of being a practising advocate, still her maintenance allowance is to be increased, keeping in view the rising inflation, price of commodities, and the overall increased cost of living since the year 2014. It is also

evident from the material on record that the respondent who is a practising professional chartered accountant is having a sound financial position and has no other liability except the petitioners as his mother is admittedly, having her own independent income and properties. Therefore, reasonable enhancement in the maintenance allowance would not be prejudicial to him.”

16. From the above, it is clear that the learned Family Court has considered each and every aspect of the matter in minute detail. Learned counsel for the petitioners is unable to controvert the above said findings of the learned Family Court, or even the legal position as noticed here in above.
17. As such, I find no merit in the present petition and the same is accordingly **dismissed**.
18. Pending application(s) if any also stand(s) disposed of.

05.03.2024

Sunena

Whether speaking/reasoned

Whether reportable

(Nidhi Gupta)

Judge

Yes/No

Yes/No