



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-1346-2024 (O&M)
Reserved on: 07.11.2024
Pronounced on: 08.11.2024

Akashdeep

... Petitioner

Vs.

Smriti Kaushal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Gaurav Chopra, Senior Advocate with
Mr. Parvez Chugh, Advocate and
Mr. Himanshu Setia, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been preferred against the impugned judgment dated 13.09.2024 passed by learned Principal Judge, Family Court, Faridabad, vide which the petition filed under Section 125 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was partly allowed and monthly maintenance was ordered to be paid to the respondents in the following manner:



Name	Date of filing to 19.04.2019	From 01.01.2023 onward
Smriti Kaushal-respondent No.1 (Wife)	Rs. 2,00,000/-	Rs. 3,00,000/-
Aarushi- respondent No.2 (Daughter)	Rs. 1,50,000/- (till attaining her majority)	None (on account of attaining majority)
Ayush Maan-respondent No.3 (son)	Rs. 1,50,000/-	Rs. 2,00,000/-

2. The marriage between the petitioner and respondent No.1 was solemnized on 23.01.2003 according to Hindu rites and rituals. Out of this wedlock, two children i.e. respondents No.2 & 3 were born, who are presently residing with respondent No.1-mother. However, matrimonial discord ensued between the couple and the respondents filed a petition under Section 125 Cr.P.C. seeking maintenance from the petitioner. The petitioner filed a reply and contested the claim made by the respondents. Learned Family Court, vide impugned judgment dated 13.09.2024, granted maintenance allowance to the respondents in the abovesaid manner. Aggrieved by the same, the petitioner has approached this Court by means of the present petition.

3. Learned senior counsel for the petitioner, *inter alia*, contends that respondent No.1-wife is well qualified and has the potential to earn her livelihood. The petitioner owns one flat in Faridabad, which is in possession of respondent No.1. Moreover, while assessing income of the petitioner,



learned Family Court has not taken into consideration the monthly expenses of the petitioner as well as the tax deductions. It has merely converted his monthly income, which is in Swiss Francs (CHF) into Indian Rupees (INR) and awarded very exorbitant amount as maintenance to the respondents, which is not in consonance with his actual income.

4. It is further contended that the petitioner was not been allowed to defend his case as the cross-examination of respondent No.1 was ordered to be treated as Nil by learned Family Court vide order dated 18.12.2023. The aforementioned approach of the learned Court below is against the settled law. Reliance in this regard can be placed upon the judgment of this Court in ***Dr. S.K. Suri Vs. Smt. Komal and another, 2003 (1) RCR (Crl.) 140***, wherein it has been held that the proceedings under Section 125 Cr.P.C. are not penal in nature and the person, against whom such proceedings are initiated, does not fall within the category of accused in terms of Section 2(n) of Cr.P.C. and as such, his physical presence is not necessary as his interests can be adequately represented by his counsel. Learned senior counsel relies upon the judgment rendered by a Division Bench of Delhi High Court in ***Ms. Bindu Chaudhary Vs. Shri Deepak Suga, MAT. APP. (F.C.) 63/2015, decided on 29.09.2016*** and submits that if the husband is working abroad and earning in foreign currency, the wife cannot mechanically seek enhancement by converting his income into Indian currency as all the living



expenses are made by the husband in foreign currency only.

5. Having heard learned senior counsel for the petitioner and after perusing the record with his able assistance, this Court finds no force in the arguments advanced on behalf of the petitioner. The proceedings under Section 125 of Cr.P.C. are summary in nature, as the provision was enacted as a measure to further social justice and protect the dependent women and children from destitution or vagrancy on account of failure of marriage. Reliance in this regard can be placed upon a judgment of the Hon'ble Supreme Court in ***Sunita Kachwaha and others Vs. Anil Kachwaha, 2014 (4) RCR (Crl.) 831***, wherein, speaking through Justice R. Banumathi, the following was observed:

“8. The proceeding under Section 125 Cr.P.C. is summary in nature. In a proceeding under Section 125 Cr.P.C., it is not necessary for the Court to ascertain as to who was in wrong and the minute details of the matrimonial dispute between the husband and wife need not be gone into.”

6. Time and again, the issue of contumacious conduct on part of the husband qua participating in maintenance proceedings has risen before this Court. The object and purpose behind granting maintenance under Section 125 Cr.P.C. is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of failure of marriage. However, this intention of the legislature and the efforts of the judiciary would be rendered superfluous if the husband avoids participating and thereby unjustly



prolonging the matter. As such, the Courts wield the power to take the requisite steps to uphold the dignity of the orders passed by it and ensure its implementation. Pertinently, a two Judge Bench of the Hon'ble Supreme Court in the case of ***Rajnesh Vs. Neha, (2021) 2 SCC 324*** has relied upon its judgment rendered in ***Kaushalya Vs. Mukesh Jain, (2020) 17 SCC 822*** to categorically hold that the Court may proceed to strike off the defence of the respondent if the errant spouse, in spite of being given a reasonable opportunity to participate in the trial, appears to be prolonging it. Reliance in this regard can also be placed on the judgment of this Court in ***Rani vs. Parkash Singh AIR 1996 P&H 175***.

7. A perusal of the record indicates that the application under Section 125 of Cr.P.C. was filed by the respondents on 19.04.2019 and several opportunity were granted to the petitioner to cross-examine respondent No.1. In fact, a last opportunity was also granted on 09.10.2023, subject to payment of costs of Rs.5,000/- and the case was adjourned to 18.12.2023. However, on said date, an application for exemption from personal appearance of the petitioner was moved and the counsel sought time to cross-examine the witness in presence of the petitioner, who was residing in Spain at that point. As such, in view of facts and circumstances of the case, learned Family Court, vide order dated 18.12.2023, rightly concluded that the petitioner is not interested in conducting cross-examination of



respondent No.1 and directed the same to be treated as Nil. Ultimately, on 16.02.2024, the petitioner was proceeded against ex parte.

8. In view of the facts and circumstances of the case, this Court is of the considered opinion that the drastic step of treating the cross-examination of respondent No.1 to be nil was taken as a last resort, when the learned Court below was rightly convinced that the errant spouse is willfully abnegating his liability. The Courts must not overlook such deliberate disobedience as the same can be deterrent to the cause of justice and defeats the purpose of the provision granting maintenance under Section 125 Cr.P.C. Additionally, the judgment passed by this Court in **Dr. S.K. Suri**'s case (*supra*) is not applicable to the present case, as the same is distinguishable on facts.

9. Furthermore, a perusal of the record indicates that the affidavits of the parties declaring their assets, income, expenditures and liabilities were already available on record. The affidavit of assets and liabilities (Annexure P-4) submitted by the petitioner indicates that he works as a "Director in Consulting" in Switzerland and his monthly income is CHF 19,200/-. The petitioner has claimed that he pays CHF 6800/- per month as tax and mandatory social contribution in Switzerland and has a personal expenditure of CHF 9050/-.

10. The Hon'ble Supreme Court in **Rajnesh**'s case (*supra*) has



made it mandatory to provide the following details in the affidavit of assets and liabilities-

“F. Details of Income of the Deponent

- 1. Name of employer:*
- 2. Designation:*
- 3. Monthly income:*
- 4. If engaged in Government Service, furnish latest Salary Certificates or current Pay Slips or proof of deposit in bank account, if being remitted directly by employer*
- 5. If engaged in the private sector, furnish a certificate provided by the employer stating the designation and gross monthly income of such person, and Form 16 for the relevant period of current employment.*
- 6. If any perquisites, benefits, house rent allowance, travel allowance, dearness allowance or any other service benefit is being provided by the employer during the course of current employment.*
- 7. Whether assessed to income tax? If yes, submit copies of the Income Tax Returns for the periods given below :*
 - (i) One year prior to marriage*
 - (ii) One year prior to separation,*
 - (iii) At the time when the Application for maintenance is filed.*
- 8. Income from other sources, such as rent, interest, shares, dividends, capital gains, FDRs, Post office deposits, mutual funds, stocks, debentures, agriculture, or business, if any, alongwith TDS in respect of any such income.*
- 9. Furnish copies of Bank Statement of all accounts for the last 3 years” (emphasis added)*

11. Curiously, no details with respect to the employer of the petitioner, his Income Tax Returns, bank statements or any benefits accrued to him by virtue of his employment are available. Rather, an estimate of cost



of living in Basel, Switzerland has been annexed with the present petition as Annexure P-9, which states that the estimated monthly cost of living for the said place is around CHF 11,879/- to CHF 12,079/-, excluding self-coverage of medical costs upto CHF 2500 per year. However, a further study of the said report (Annexure P-9) would reflect that the assessment has been made on the information provided by the petitioner himself. In fact, it has been clearly mentioned that where specific data was not accessible, they have calculated the average cost of living through their own research. The report itself provides a disclaimer stating that the figures mentioned therein are mere approximations. Moreover, the petitioner himself has claimed his personal expenditure to be CHF 9050/- per month in the affidavit submitted by him, which contradicts the report (Annexure P-9). There is a clear discrepancy between the cost of living claimed by the petitioner in his affidavit (CHF 9050/-) and the sum stated in the report(Annexure P-9) (CHF 11,879/- to 12,079/-). As such, this Court cannot reasonably rely upon this report (Annexure P-9) in order to get an estimation of the cost of living in Switzerland for the petitioner.

12. After the deduction of the mandatory tax and social contributions of CHF 6800/-, the petitioner is left with an abundant amount of CHF 12,400/-. However, the failure of the petitioner to produce the Income Tax Returns, bank statements, name of the employer, house rent



allowance, travel allowance, dearness allowance etc., as mandated by the dictum in ***Rajnesh***'s case (*supra*) also merits drawing an adverse inference against him. Moreover, since the death of his father on 04.11.2022, the petitioner has no other liabilities.

13. Admittedly, the petitioner makes CHF 19,200/- per month. While it is understood that the petitioner is earning and spending in Swiss Francs, he cannot be allowed to shrug of his moral and legal liability to maintain his wife and children, especially in absence of evidence indicating his incurable inability to do the same. Moreover, once the petitioner has allowed the Court to presume his income by submitting incomplete affidavit and not participating in the proceedings, he cannot be allowed to claim insufficiency of funds to honour the impugned order, five years after filing of the application. Furthermore, it cannot be said that the interests of the petitioner were not considered as he was represented by the counsel before the learned Family Court, who was acting on instructions of the petitioner. In spite of being given several opportunities, he failed to cross-examine respondent No.1 or file the requisite documents to strengthen his case.

14. Learned Family Court has awarded maintenance of Rs.3,00,000/- to respondent No.1-wife and Rs.2,00,000/- to respondent No.3 from 01.01.2023. Respondent No.2 was rightly not awarded any maintenance in view of ***Abhilasha Vs. Prakash, 2020 AIR SC 4355***, as she



has attained the age of majority. The Hon'ble Supreme Court in ***Kalyan Dey Chowdhary Vs. Rita Dey Chowdhary Nee Nandy, AIR 2017 SC 2383***, has held that it would be just and proper to award 25% of the husband's salary as maintenance to the wife. Accordingly, since 25% of CHF 19,200/- amounts to CHF 4800/- which is equivalent to about Rs.4,59,688/-, this Court does not interfere in the impugned order. Certainly, when the petitioner can spend about Rs.9,00,000/- per month on himself, he can honour the order passed by learned Court below.

15. 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 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. 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.

16. 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.”

17. 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 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.”

18. 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.

19. A study of the impugned order indicates that learned Court below has duly considered the material placed before it for determining the quantum of maintenance. A careful and just balance has been drawn, keeping in view the spiralling inflation rates and high cost of living corresponding to the reasonable needs of the respondents. Learned counsel for the petitioner has been unable to indicate any ground, which would warrant interference by this Court.

20. Accordingly, the present petition is dismissed being bereft of any merit.

21. All the pending miscellaneous application(s), if any, shall stand disposed of.

08.11.2024

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[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No