



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-29-2024 (O&M)

Date of decision:01.08.2024

Anupam @ Anupam Sharma and another

....Petitioners

V/s

Sukhwinder Kumar

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Damanjeet Bhorawal, Advocate for the petitioners.

Mr. S.K. Passi, Advocate for the respondent.

SUMEET GOEL, J.

1. The instant petition is directed against the order dated 15.11.2023 passed by Principal Judge, Family Court, Ferozepur, Punjab whereby the application filed by the petitioners (herein) under Section 125 of Cr.P.C. of 1973 for grant of ad-interim maintenance was dismissed as follows:

“From the above facts and circumstances, this Court is of the considered view that applicant is still earning and as such, she can easily maintain herself as well as her minor child. Further, she has herself left the society of respondent at her own. So she is not entitled for any interim maintenance from the respondent at this stage. Therefore, the application, being devoid of any merits, stands dismissed. However, any observbation made above shall have no effect on the merits of the case.”

2. Learned counsel for the petitioners has argued that the approach of the Court below is erroneous while declining the application for ad-interim maintenance as it has not correctly appreciated the facts in right perspective. Learned counsel has further argued that the petitioner No.1 has neither any source of income nor any movable or immovable property in her

name. It has been further argued that the respondent was working as an



Accountant at a Commission Agency and was earning Rs.50,000/- per month. It is, thus, pleaded that the Court below has acted in haste and in a cryptic manner and thus rejected the ad-interim maintenance application on flimsy grounds.

3. *Per contra*, learned counsel for the respondent submits that the learned Family Court, after taking into consideration all the facts and circumstances, has rightly declined the maintenance. According to learned counsel, the petitioner No.1-wife has left the company of the respondent on her own accord without any reason. It has been further argued that the petitioner No.1 was working as a teacher and earning handsomely in order to maintain herself as well as her minor son. Thus, it has been prayed that the present petition be dismissed.

4. I have heard counsel for the parties and have gone through the available records of the case.

5. During the course of hearing, it has transpired that the impugned judgment has been passed by the learned Family Court without seeking, from the rival parties, the affidavit(s) of assets and liabilities in terms of the judgment of the Hon'ble Supreme Court in ***Rajnesh vs. Neha, 2021(2) SCC 324***.

6. It would be apposite to refer herein to a judgment passed by Hon'ble Supreme Court in ***Aditi @ Mithi vs. Jitesh Sharma, 2023 INSC 981***; relevant whereof reads as under:-

“8. The manner in which maintenance payable under Section 24 of the Hindu Marriage Act, 1955 or Section 125 Cr.P.C. is to be assessed, was considered by this Court in its celebrated judgment in Rajnesh v. Neha and Another, (2021) 2 SCC 324. Detailed guidelines were issued. It was noticed that the terms of maintenance are decided on the basis of pleadings of parties and on the basis of some amount of guess work. It is



often seen that both the parties submit scanty material and do not disclose correct details. The tendency of the wife is to exaggerate her needs, whereas the husband tends to conceal his actual income. Keeping that in view, this Court laid down the procedure to streamline grant of maintenance. The judgments of various courts were referred to and response from various State Legal Services Authorities was sought. This Court even requested the National Legal Services Authority to submit a report on the suggestions received from the State Legal Services Authorities for framing guidelines on the affidavit of disclosure of assets and liabilities to be filed by the parties. Guidelines were issued in exercise of powers under Article 136 read with Article 142 of the Constitution of India, prescribing a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings. The judgment was delivered on 04.11.2020. The affidavit was to be submitted in all maintenance proceedings including pending proceedings. The directions given are extracted as under:

“72. Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers under Article 136 read with Article 142 of the Constitution of India:

72.1. (a) The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrate's Court concerned, as the case may be, throughout the country;

72.2. (b) The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;

72.3. (c) The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks. The courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent. If the respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for this purpose, the court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings [Kaushalya v. Mukesh Jain, (2020) 17 SCC 822 : 2019 SCC OnLine SC 1915] .



On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on the basis of the affidavit filed by the applicant and the pleadings on record;

72.4. (d) The above format may be modified by the court concerned, if the exigencies of a case require the same. It would be left to the judicial discretion of the court concerned to issue necessary directions in this regard.

72.5. (e) If apart from the information contained in the Affidavits of Disclosure, any further information is required, the court concerned may pass appropriate orders in respect thereof.

72.6. (f) If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek permission of the court to serve interrogatories, and seek production of relevant documents from the opposite party under Order 11 CPC. On filing of the affidavit, the court may invoke the provisions of Order 10 CPC or Section 165 of the Evidence Act, 1872, if it considers it necessary to do so. The income of one party is often not within the knowledge of the other spouse. The court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned.

72.7. (g) If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended/supplementary affidavit, which would be considered by the court at the time of final determination.

72.8. (h) The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the court may consider initiation of proceeding under Section 340 CrPC, and for contempt of court.

72.9. (i) In case the parties belong to the economically weaker sections ("EWS"), or are living below the poverty line ("BPL"), or are casual labourers, the requirement of filing the affidavit would be dispensed with.

72.10. (j) The Family Court/District Court/Magistrate's Court concerned must make an endeavour to decide the IA for interim maintenance by a reasoned order, within a period of four to six



months at the latest, after the Affidavits of Disclosure have been filed before the court.

72.11. (k) *A professional Marriage Counsellor must be made available in every Family Court.”*

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14. *Nothing is evident from the record or even pointed out by the learned counsel for the appellant at the time of hearing that affidavits were filed by both the parties in terms of judgment of this Court in **Rajnesh’s** case (**supra**), which was directed to be communicated to all the High Courts for further circulation to all the Judicial Officers for awareness and implementation. The case in hand is not in isolation. Even after pronouncement of the aforesaid judgment, this Court is still coming across number of cases decided by the courts below fixing maintenance, either interim or final, without their being any affidavit on record filed by the parties. Apparently, the officers concerned have failed to take notice of the guidelines issued by this Court for expeditious disposal of cases involving grant of maintenance. Comprehensive guidelines were issued pertaining to overlapping jurisdiction among courts when concurrent remedies for grant of maintenance are available under the Special Marriage Act, 1954, Section 125 Cr.P.C., the Protection of Women from Domestic Violence Act, 2005, Hindu Marriage Act, 1955 and Hindu Adoptions and Maintenance Act, 1956, and Criteria for determining quantum of maintenance, date from which maintenance is to be awarded, enforcement of orders of maintenance including fixing payment of interim maintenance. As a result, the litigation which should close at the trial level is taken up to this Court and the parties are forced to litigate.”*

Thus, it is unequivocal that filing of affidavit(s) of assets and liabilities of rival parties, as mandated by Hon’ble Supreme Court, is pertinent and essential.

7. It is not in dispute that the affidavit(s) of assets/liabilities of rival parties were not brought on record. Further, it is also not decipherable from the record that the rival parties were directed by the learned Family



Court to file the said affidavit(s) and the same was not filed whereinafter either the right to file the same was foreclosed or an adverse inference has been drawn. As a result thereof, the impugned judgment cannot be sustained on this score alone.

Decision

8. Keeping in view the totality of facts and circumstances of the case, it is directed as follows:

- (i) The impugned judgment dated 15.11.2023 passed by Principal Judge, Family Court, Ferozepur, Punjab is set-aside.
- (ii) The parties are directed (through their respective counsel) to appear before the said Family Court on 19.08.2024 whereinafter the said Family Court shall proceed further, in accordance with law, with the matter & decide the same after taking affidavit(s) of assets/liabilities as directed for by the Hon’ble Supreme Court in the judgments titled as **Rajnish vs. Neha, 2021(2) SCC 324** and **Aditi @ Mithi (supra)**.
- (iii) The petition (under Section 125 of Cr.P.C. of 1973 for grant of ad interim maintenance) was instituted in the year 2023 & hence the said Family Court is directed to decide the matter expeditiously, in accordance with law, preferably within a period of 04 months from date of the receipt/production of certified copy of this order.

(SUMEET GOEL)
JUDGE

August 01, 2024
Ajay

Whether speaking/reasoned:	Yes
Whether reportable:	Yes