

**IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH****108****CRR-F-1490-2024(O&M)****Date of order: 28.11.2024****Sunita @ Sheetal & Another****.....Petitioner(s)****Vs.****Pardeep Kumar Tondon****.....Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Ms. Taanvi Dhull, Advocate for
Mr. Lakshay Bector, Advocate
for the petitioners.

Nidhi Gupta, J.**CRM-46887-2024**

This is an application under Section 5 of Limitation Act read with Section 482 Cr.P.C. for condonation of delay of 25 days in filing the petition.

After going through the contents of the application, which is supported by affidavit of the applicant/petitioner No.1, the same is allowed subject to all just exceptions and delay of 25 days in filing the present petition is condoned.

MAIN CASE

Prayer in the present petition is for modification of the order dated 29.07.2024 passed by the learned Additional Principal Judge, Family Court, Ludhiana, whereby in a proceeding under Section 125 Cr.P.C., the petitioners have been granted final maintenance of Rs.9,500/- per month (Rs.2,500/- per month to petitioner No.1/wife and Rs.7,000/- per

month to petitioner No.2/daughter) from the date of order along with litigation expenses of Rs.10,000/-.

2. Learned counsel for the petitioners inter alia submits that the impugned maintenance is on the lower side as admittedly, the respondent is working as an Inspector in Food and Supply Department. He is earning more than Rs.70,000/- per month. Despite this fact, meager maintenance of only Rs.9,500/- per month has been granted to the petitioners. The Id. Family Court has failed to appreciate that the petitioner No.1 has the responsibility of the 11-year-old minor daughter/petitioner No.2. It is accordingly prayed that the impugned maintenance be enhanced.

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

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

5. Perusal of record of the case shows that the petitioner No.1 was married to the respondent on 26.06.2012. Petitioner No.2 was born out of their wedlock on 14.05.2013. Due to matrimonial discord, the parties are living separately since 18.10.2016. The present petition under section 125 CRPC was filed by the petitioners on 17.05.2018.

6. The record bears out that it has been correctly stated by the petitioners that the respondent is working as an Inspector in the office of the District Controller, Food, Civil Supplies and Consumer Affairs, Jalandhar. However, it is also a matter of record that the respondent is 80% disabled. This fact has not been denied by the petitioners. Yet, it is

contended that in his Affidavit of Income, Assets and Liabilities (Annexure P2), the respondent has not disclosed any additional expenses for special treatment or medical care due to his disability. I find the said argument of the petitioners to be callous; especially in view of the fact that admittedly, the petitioner No.1 is able bodied and is also a qualified JBT/BA. It has also been admitted at Bar by the learned counsel for the petitioners that the petitioner No.1 was previously working as a Teacher. On a Court query as to why she is presently not employed, learned counsel for the petitioners is unable to give any reply. To the contrary it was stated that the respondent has solemnized second marriage and also has a daughter from the second marriage.

7. Therefore, keeping in view all the above admitted facts that a) the respondent is 80% physically handicapped; b) the respondent has additional responsibility of his new family; c) admittedly, the petitioner No.1 is qualified JBT, BA and is able bodied; despite that she is not working, I find no ground is made out to enhance the impugned maintenance.

8. In these facts and circumstances, reference may be made to judgment of the Karnataka High Court in “**Smt. Shilpashree J. M. & Others Vs. Gurumanjunatha A.S. & Others**”, 2023 SCC OnLine Kar 36, Law Finder Doc ID # 2260157 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 supplied)

9. Reference may also be made to judgment of High Court of Delhi in **"Anju &Anr. Vs. RinkuDahiya"** Law Finder Doc ID # 2349279, 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.***

10. Reliance can also be placed upon judgment of the Hon'ble Supreme Court in case of "**Bhushan Kumar Meen v. Mansi Meen Allas Harpreet Kaur**" (SC) : Law Finder Doc Id # 547724. In the said case too, the wife albeit well qualified, was not working. Accordingly, the Hon'ble Supreme Court had held that "*However, having regard to qualifications that Wife possesses, there is no reason why she ought not to be in a position to also maintain herself in future...*", and had accordingly reduced the amount of interim maintenance granted to the respondent wife.

11. At this stage, it is submitted by learned counsel for the petitioners that he has no grievance with the maintenance granted to the petitioner No.1; however, prays that the meager maintenance of Rs.7,000/- per month granted to the petitioner No.2 be enhanced. However, the said prayer of the petitioners is also liable to be rejected in view of the established legal principle that the Mother also has a responsibility to maintain her minor child. In this regard, reference may be made to case of "**Smt. Anshu Gupta vs. Adwait Anand @ Devansh**" Criminal Revision no. 133 of 2013, Law Finder Doc ID # 2296380, wherein in similar circumstances where the mother of the minor child was also working, the High Court of Uttarakhand held the mother of the minor child liable to pay maintenance. The argument on behalf of the mother that under the

provisions of Section 125 Cr.PC the duty to maintain the minor children was only upon the father, was rejected. Relevant extract of the abovesaid judgment is as follows: –

“Criminal Procedure Code, 1973 Section 125 Indian Penal Code, 1860 Section 8 Grant of maintenance - Liability to maintain a child - Liability to maintain a minor child is always on "any person", if he has sufficient means neglects and refuses to maintain a minor child - "The person" word denotes not only male but a female gender and it cannot be said that such person can only qualify father and not mother - Any "person" use in the provisions of section 125 (1) Criminal Procedure Code includes both mother and father - "Person" would include both male and female and in reference to a minor child whether legitimate or illegitimate mother or father having sufficient means if neglects and refuses to maintain such minor child would be held liable to pay maintenance of such child - Revisionist herself is a Government Teacher, who at present, would be getting a minimum Rs. 1,00,000/- as salary - Revision Petition dismissed.”

12. In view of the above noted, factual and legal position, the present petition is **dismissed**.

13. Pending application(s) if any shall also stand(s) disposed of.

28.11.2024
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No