



IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR-F-1496-2024(O&M)

Date of order: 28.11.2024

Sunil Nandal

.....Petitioner(s)

Vs.

Monika & Others

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Nikhil Anand, Advocate
for the petitioner.

Nidhi Gupta, J.

Challenge in the present petition is to the order dated 14.10.2024 passed by the learned Principal Judge, Family Court, Jhajjar, whereby in a proceeding under Section 125 CR.P.C., the petitioner has been directed to pay interim maintenance of Rs.45,000/- per month (Rs.20,000/- per month to respondent No.1/wife and Rs.12,500/- each per month to respondents No.2 and 3/minor daughter and son respectively) from the date of filing the petition.

2. Learned counsel for the petitioner inter alia submits that the impugned order has been passed on the mistaken assumption that the petitioner is presently working and fetching a salary of Rs.2,50,000/- per month. It is contended that the said assumption of the learned Family Court is utterly unfounded as the petitioner worked in Merchant Navy on contract basis till 2021, which contract was not extended thereafter. In this regard, learned counsel has referred to the Continuous Discharge Certificate-cum-Seafarer's Identity Document (Annexure P2) which is issued

to officials of Merchant Navy and carries date of departure from and arrival in India. It is further submitted that even a perusal of the bank statement (Annexure P3) for the last three years attached by the petitioner before the learned Family Court shows that there is no entry therein of receiving salary of Rs.2,50,000/- per month as alleged. It is accordingly prayed that the impugned order has been passed on incorrect premise, and the same be set aside.

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

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

5. Perusal of record of the case shows that the petitioner was married to respondent No.1 on 19.06.2013. Two children/respondents No.2 and 3 herein were born out of their wedlock who are in the care and custody of respondent No.1/wife. Due to matrimonial discord, the parties are residing separately since 16.06.2021. Present petition under Section 125 Cr.P.C. (Annexure P1) was filed by the respondents on 31.01.2022.

6. It has been argued on behalf of the petitioner that the impugned order has been passed on the incorrect premise that the petitioner is employed with Merchant Navy and is drawing a salary of Rs.2,50,000/- per month. However, a perusal of record shows that the said facts have been stated by the petitioner himself in the Affidavit of Income, Assets and Liabilities filed by the petitioner before the learned Family Court (which is placed on record before this Court as Annexure P6 with the present petition); wherein in Column F, the petitioner has stated as under:-

"1. Name of the employer: Merchant Navy, Overseas Marine Logistics

(working from April, 2023 at D.S. Marine Logistics)

2. Designation: Crane Operator/Supervisor

3. Monthly income: Rs 2,50,000/- per month approx. (Rs 8800)".

7. Accordingly, it was recorded in the impugned order that:-

"17. The fact remains that the respondent is able bodied person, maintaining himself and having capacity to earn. As per affidavit of income, assets and expenditure furnished by the petitioner-wife, her qualification is Graduation having no source of income, whereas as per affidavit of income, assets and expenditure furnished by the respondent his qualification is Senior Secondary. He is serving as Crane Operator/Supervisor in Merchant Navy Overseas Marine Logistics since April, 2023 and he has disclosed his income as Rs 2,50,000/- per month.

18. He raised a person loan of Rs 10,00,000/- from ICICI Bank for household expenses in the year 2016, EMI of which was Rs 14,248 - but it revealed that the loan liability of Rs 6,00,000/- is still outstanding towards him. He is living in the house at Village Kutana, PO Dobh, Tehsil and District Rohtak owned by his father. As such the respondent has no rental liability."

8. It has further been recorded by the learned Family Court in Para 19 of the impugned order as follows:-

"19. At later stage on 23.07.2024, learned counsel for the respondent placed on record some certificate issued by One Sandeep D.S. Logistics Company, Rohtak certifying therein that

the respondent has been fetching the salary of Rs 8800/- per month since April 2023. However, the above-said certificate placed on record by the respondent on 23.07.2024 (after filing of affidavit of assets, income and expenditure on 28.11.2023 thereby disclosing his salary as Rs 2,50,000/- per month is liable to be disbelieved for though in the above-said certificate company is shown to be situated in Rohtak, the seal appended underneath the signature of one Sandeep, the above-said logistics is reflected to be situated at Ahmedabad.”

9. It is by now a settled trend that in matters of maintenance such as the present one, each spouse tries to depict their own income on the lower side and show an exaggerated income of the other. The truth lies somewhere in between. However, these are all matters of evidence. The truth or otherwise of the allegations and counter-allegations made by both the parties can only be determined upon leading of evidence. As such, it is neither desirable nor feasible for this Court to interfere at this stage, let alone return a finding in respect of the contrary assertions made by either of the parties.

10. Furthermore, even if the argument of the petitioner were to be accepted, the same is liable to be rejected in view of judgment of the Hon’ble Supreme Court in “**Shamima Farooqui v. Shahid Khan**” (SC): **Law Finder Doc Id # 661024**, wherein it has been categorically held as follows: –

“B. Criminal Procedure Code, 1973 Section 125 Grant of maintenance to wife - Plea of husband that he was not doing job and had no means to pay cannot be accepted - These are only bald excuses - Held :-

(i) If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife.

(ii) It is the obligation of the husband to maintain his wife - He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning."

11. Even otherwise, the grant of interim maintenance is a temporary measure of social justice to help the abandoned wife and children to tide over the difficult period. It is oft-repeated and no longer res integra that Section 125 Cr.P.C. is a measure of social justice to protect abandoned wife, children and parents from vagrancy and destitution. In **"Kirtikant D. Vadodaria v. State of Gujarat & Another" (1996) 4 SCC 479**, the Hon'ble Supreme Court has 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..."

12. Again, a three-Judge Bench of the Hon’ble Supreme Court in “**Vimala (K.) v. Veeraswamy (K.)**” (1991) 2 SCC 375, speaking through Justice Fatima Beevi, held 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...”

13. Thus, the purpose of Section 125 Cr.P.C. is to protect abandoned wives who are unable to maintain themselves from vagrancy and destitution, to grant social justice to a destitute woman, child, or infirm parents. Moreover, in view of the admitted relationship between the parties, the petitioner cannot escape his responsibility to maintain the respondents.

14. Accordingly, I find no ground is made out that calls for interference in the impugned order. As such, the present petition is **dismissed**.

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

16. However, it is made clear that nothing stated hereinabove shall be construed as an expression of opinion on the merits of the matter.

28.11.2024
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No