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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-1498-2024 (O&M)

Date of decision: 28.11.2024

Sushil Kumar

... Petitioner

Vs.

Suman and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Damanjeet Singh Batalvi, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

CRM-47039-2024

1. This application has been filed under Section 5 of the Limitation Act, 1963 for condonation of delay of 774 days in filing the revision petition.
2. In view of the averments made in the application, same is allowed and delay of 774 days in filing the revision petition is condoned.

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3. The present revision petition has been preferred against the impugned judgment dated 15.07.2022 passed by learned Principal Judge,



Family Court, Sonipat, vide which the application filed under Section 127 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') [*now Section 146 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS')*] was allowed ex-parte and maintenance amount was enhanced from Rs.1,600/- per month (*Rs.800/- each to both the respondents*) awarded in favour of the respondents, vide order dated 27.02.2017, to Rs.8,000/- per month i.e. *Rs.4,000/- per month each for both the respondents.*

4. The marriage between the petitioner and respondent No.1 was solemnized on 10.03.2007 according to Hindu rites and rituals and out of this wedlock, one male child i.e. respondent No.2 was born, who is presently living with respondent No.1. However, the matrimonial dispute ensued between the couple and the respondents filed a petition under Section 125 of Cr.P.C. (*now Section 144 of BNSS*) seeking maintenance. The petitioner filed a reply and contested the claim made by the respondents. Learned Family Court, vide judgment dated 27.02.2017, granted maintenance allowance of Rs.800/- per month each, total Rs.1,600/- per month, in favour of the respondents. Thereafter, the respondents filed an application under Section 127 of Cr.P.C. (*now Section 146 of BNSS*) seeking enhancement of the amount of maintenance and learned Family Court, vide impugned judgment dated 15.07.2022, enhanced the amount of maintenance from Rs.1,600/- per month to Rs.8,000/- per month in favour of the respondents. Aggrieved by



the same, the petitioner has approached this Court by filing the present petition.

5. Learned counsel for the petitioner, *inter alia*, contends that respondent No.1 left the company of the petitioner without justifiable cause. The petitioner filed a petition under Section 9 of Hindu Marriage Act, 1955 (for short 'HM Act') seeking restitution of conjugal rights, which was allowed on 05.12.2013. When respondent No.1 did not join his company, the petitioner filed a petition under Section 13 of HM Act seeking divorce from respondent No.1 on the ground of desertion and cruelty and the same was allowed by learned Additional District Judge, SAS Nagar, Mohali, vide judgment dated 27.04.2015. It is further contended that learned Family Court, without appreciating the material brought on record, enhanced the maintenance amount of Rs.1,600/- per month, awarded vide order dated 27.02.2017, to Rs.8,000/- per month, which is not in consonance with actual income of the petitioner.

6. Having heard learned counsel for the petitioner and after perusing the record of the case with his able assistance, this Court finds no force in the arguments advanced on behalf of the petitioner.

7. 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. (*now Section 144 of BNSS*) 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. (*now Section 144 of BNSS*) 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.

8. 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.”

9. 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.”

10. Another objective the legislature has sought to achieve by this provision is to provide maintenance *pendente lite* to the applicant spouse during proceedings emerging out of matrimonial disputes so that she/he can maintain herself/himself, have sufficient funds to pursue the litigation, and not suffer at the instance of the affluent spouse.

11. 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.

12. While dealing with the issue of maintenance *in extenso*, a two Judge Bench of the Hon'ble Supreme Court in ***Rajnesh Vs. Neha and another, (2021) 2 SCC 324*** laid down the criteria for determining quantum of maintenance and issued the following directions:

"VI Final Directions

130. In view of the foregoing discussion as contained in Part B -1 to V of this judgment, we deem it appropriate to pass the following directions in exercise of our powers under Article 142 of the Constitution of India:

(a) Issue of overlapping jurisdiction

131. To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that:

(i) where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or setoff, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding:



(ii) it is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding;

(iii) if the order passed in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding

(b) Payment of Interim Maintenance

132. The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the concerned Family Court / District Court / Magistrates Court, as the case may be, throughout the country.

(c) Criteria for determining the quantum of maintenance

133. For determining the quantum of maintenance payable to an applicant, the Court shall take into account the criteria enumerated in Part B III of the judgment.

134. The aforesaid factors are however not exhaustive, and the concerned Court may exercise its discretion to consider any other factor/s which may be necessary or of relevance in the facts and circumstances of a case.

(d) Date from which maintenance is to be awarded

135. We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B-IV above.

(e) Enforcement/Execution of orders of maintenance

136. For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1956; Section 20(6) of the D.V. Act; and Section 128 of Cr.P.C may be applicable. The arder of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC



more particularly Sections 51, 55, 58, 60 r.w. Order XXI."

13. From perusal of the record, it transpires that initially, the petitioner appeared in person before learned Family Court, however, when the case was fixed for filing the written statement, he did not appear and vide order dated 24.11.2021, he was proceeded against ex-parte. Thereafter, the respondents led their evidence and while observing that the maintenance amount of Rs.1,600/- per month granted to them vide judgment dated 27.02.2017 is not sufficient for their sustenance, learned Family Court, vide impugned judgment dated 15.07.2022, enhanced the amount of maintenance from Rs.1,600/- per month to Rs.8,000/- per month. In the absence of any documentary proof regarding income of the petitioner, learned Family Court observed that even if he is doing the labour work, he can earn Rs.15,000/- to Rs.20,000/- per month and rightly enhanced the amount of maintenance.

14. It is trite law that an able-bodied husband is legally and morally bound to maintain his wife. However, if the husband is unemployed or documentary proof qua his income is not available, it can be reasonably assumed that he can work as a labourer and earn the prevalent minimum wage. Reliance in this regard can be placed on judgments rendered by the Hon'ble Supreme Court in ***Bhuvan Mohan Singh Vs. Meena, 2014(3) R.C.R (Criminal) 723*** and this Court in ***Amanjot Singh Vs. Rajwant Kaur, 2017(1) R.C.R (Criminal) 1070, Satish @Bittoo Vs. Suresh Devi, 2018(1)***



Law Herald 595, Dalip Kumar @ Deepa Vs. Sunita and another, 2012(2) R.C.R.(Criminal) 434 and Sandeep Vs. Suman in CR-1802-2023 decided on 22.03.2023.

15. A perusal of the impugned judgment passed by learned Family Court makes it evident that the Court below has duly considered the material placed before it for enhancing the amount 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 not been able to indicate any perversity in the impugned judgment, which warrants interference by this Court. Accordingly, the present petition is dismissed being bereft of any merit.

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

**[HARPREET SINGH BRAR]
JUDGE**

28.11.2024
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No