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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision: 11.12.2024

Sukhwinder Singh

...Petitioner

V/s

Prabhjot Bhatti

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Naveen Batra, Advocate for the petitioner.

Mr. Arun Takhi, Advocate for the respondent.

SUMEET GOEL, J. (Oral)

1. Present revision petition has been preferred against the order dated 22.11.2023 passed by the Principal Judge, Family Court, Hoshiarpur (hereinafter to be referred as the 'concerned Family Court') praying for modification/reduction of the maintenance amount granted vide the said order. Vide the impugned order; the respondent-minor son (herein) has been awarded interim maintenance at the rate of Rs.10,000/- per month to be paid by the petitioner-father (herein) from the date of the application alongwith litigation expenses of Rs.10,000/-. It has been further directed by the Family Court that, from the interim maintenance granted to the respondent-minor son (herein), a sum of Rs.5,000/- be deposited in the account of the respondent as fixed deposits in a nationalized bank or post office for his future and the remaining amount of Rs.5,000/- be utilized for his upkeep and higher education. The respondent-minor (herein), through his natural guardian i.e. mother, had filed a petition, under Section 125 of Cr.P.C., 1973 before the Family Court, stating that the petitioner-father (herein), being his

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father is legally bound to maintain him and hence the interim maintenance ought to be awarded to him.

2. Learned counsel appearing for the petitioner has iterated that the Family Court, while assessing the quantum of interim maintenance, has passed the impugned order without properly appreciating the facts and circumstances of the case. It is further iterated that the Family Court has awarded the interim maintenance erroneously by observing that the petitioner is Junior Engineer while ignoring that the mother of the respondent is a well-qualified government teacher with sufficient income to support herself and the minor child. It has been further submitted that the respondent initially claimed monthly expenses of Rs.5,000/- yet the Family Court has awarded double that amount without considering the financial liabilities of the petitioner, including his obligation to support his aged parents and their medical expenses. Furthermore, the petitioner has been unfairly denied access to the respondent-minor child (herein), despite his efforts to seek custody under the Guardians and Wards Act, 1890. It has been argued that the wife of the petitioner has maliciously restricted the interaction of the petitioner with the minor child, thus, depriving the child of paternal love and affection. It has been further iterated that the awarded interim maintenance of Rs.10,000/- per month for the child is excessive, considering the tender age and minimal expenses of the child. The Family Court has overlooked the financial constraints and family obligations of the petitioner while determining the amount of interim maintenance. Moreover, the Family Court has acted in haste and relied on assumptions and presumptions without scrutinizing the pleadings or evidence on record.



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Thus, it has been prayed that the impugned order suffers from gross illegality, procedural lapses and perversity and is liable to be set-aside or suitably modified.

3. *Per contra*, learned counsel for the respondent has argued that the learned Family Court has rightly allowed the application seeking interim maintenance as the petitioner is legally bound to maintain the respondent, being his father. Furthermore, the Family Court has determined the quantum of maintenance based on the calculation of the income of the petitioner as also taken due consideration of the relevant facts and circumstances of the case. Thus, it has been prayed that the present petition be dismissed.

4. I have heard learned counsel for the rival parties and have perused the available record.

5. It would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court titled as ***Rajnish vs. Neha & Anr.: 2021(2) SCC 324***; relevant whereof reads as under:-

“II Payment of interim Maintenance

1. *The proviso to Section 24 of the HMA (inserted vide Act 49 of 2001 w.e.f. 24.09.2001), and the third proviso to Section 125 Cr.P.C., 1973 (inserted vide Act 50 of 2001 w.e.f. 24.09.2001) provide that the proceedings for interim maintenance, shall as far as possible, be disposed of within 60 days' from the date of service of notice on the contesting spouse. Despite the statutory provisions granting a time-bound period for disposal of proceedings for interim maintenance, we find that application remain pending for several years in most of the cases. The delays are caused by various factors, such as tremendous docket pressure on the Family Courts, repetitive adjournments sought by parties, enormous time taken for completion of pleadings at the interim stage itself, etc. Pendency of applications for maintenance at the interim stage for several years defeats the very object of the legislation.*
2. *At present, the issue of interim maintenance is decided on the basis of pleadings, where some amount of guess-work or rough estimation takes place, so as to make a prima facie assessment of the amount to be awarded. It is often seen that both*



parties submit scanty material, do not disclose the correct details, and suppress vital information, which makes it difficult for the Family Courts to make an objective assessment for grant of interim maintenance. While there is a tendency on the part of the wife to exaggerate her needs, there is a corresponding tendency by the husband to conceal his actual income.

74. It has therefore, become necessary to lay down a procedure to streamline, the proceedings, since a dependant wife, who has no other source of income, has to take recourse to borrowings from her parents/relatives during the interregnum to sustain herself and the minor children, till she begins receiving interim maintenance.

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(j) The concerned Family Court /District Court/Magistrate’s Court must make an endeavour to decide the I.A. 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.

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xxx xxx xxx xxx xxx

132. 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 concerned Family Court/District Court/Magistrate’s Court, as the case may be, throughout the country;

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xxx xxx xxx xxx xxx”

6. Vide the impugned order passed by the Family Court, the aspect of interim maintenance has been decided. It goes without saying that a decision upon the aspect (especially quantum) of interim maintenance, being result of some element of estimation, has to be construed accordingly as the entitlement of the applicant (making a plea for grant of interim maintenance) cannot be based upon exact arithmetical calculations at such stage. The order granting interim maintenance is, indubitably, subject to final adjudication and it is a provisional step subject to final determination to



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be made on the conclusion of proceedings. In other words, the interim maintenance is only tentative & is subject to fixation of final maintenance.

7. Indubitably, the relationship between the respondent-minor son and the petitioner as son and father is undisputed. It is also an admitted fact that the respondent-minor son (herein) is currently residing separately from the petitioner-father (herein) but along with his mother. While going through the impugned order, it transpires that both the parties (i.e. the petitioner-father and the respondent, through his natural guardian i.e. mother), have placed on record their respective affidavits with regard to disclosure of their respective incomes, assets and liabilities in terms of the judgment of the Hon'ble Supreme Court titled as **Rajnesh** case (supra). The Family Court upon perusal of the affidavit of the petitioner-father (herein) held that he is earning a salary of Rs.65,116/- per month while working as Junior Engineer in the Irrigation Department and has no other liability, as the mother of the respondent i.e. petitioner's wife is a working professional and not financially dependent on the petitioner (herein). The Family Court further observed that the claim of the petitioner-father (herein) that his elderly parents are dependent upon him is without any substance as he has not been able to establish that his parents are solely reliant on him. Furthermore, the Family Court held that it is both the moral and legal obligation of the petitioner-father (herein) to maintain his minor son, who has no movable or immovable property and lacks an independent source of income. Moreover, the respondent-minor son is dependent on his mother while residing separately from the petitioner-father (herein). The petitioner-father (herein) cannot evade his responsibility to maintain his minor son (respondent herein)



merely because the mother of the child is earning a substantial salary as a Math Teacher. It is the duty of both the parents to share the responsibility of maintaining their child, especially when both are employed. The petitioner-father, being financially capable cannot absolve himself of his bounden duty to maintain his minor son, even if it requires additional effort on his part. In light of the facts and circumstances, the income of the petitioner-father, the social and living status of the parties coupled with rising costs of living, the Family Court found it reasonable to award an amount of interim maintenance, as indicated hereinabove, to the respondent-minor child.

7.1 The contention raised on behalf of the petitioner-father (herein) that he is not liable to maintain the respondent-minor child owing to the fact that the mother of the child possesses sufficient means, is not well-founded in law. Section 125 Cr.P.C. is a tool for social justice enacted to ensure that women and children are protected from a life of potential vagrancy and destitution. If the husband/father has sufficient means, he is obligated to maintain his wife and children, and cannot shirk away from his moral and familial responsibilities. In households wherein the women are working and are earning sufficiently to maintain themselves, it does not automatically mean that the husband/father is absolved of his responsibility to provide sustenance for his children. A father has an equal duty to provide for his children and there cannot be a situation wherein it is only the mother who has to bear the burden of expenses for raising and educating the children. A profitable reference in this regard can be made to the following observations made by the Hon’ble Supreme Court in the case of *Rajnesh* (supra):-



90. The Courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The Courts have provided guidance on this issue in the following judgments.

91. In **Shailja & Anr. v. Khobbanna, (2018) 12 SCC 199**. See also Decision of the Karnataka High Court in **P. Suresh v. S. Deepa & Ors., 2016 CriLJ 4794** this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The Court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. **Chaturbhuj v. Sita Bai, (2008) 2 SCC 316** Sustenance does not mean, and cannot be allowed to mean mere survival. **Vipul Lakhanpal v. Smt. Pooja Sharma, 2015 SCC Online HP 1252**.

92. In **Sunita Kachwaha & Ors. v. Anil Kachwaha (2014) 16 SCC 715** the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

93. The Bombay High Court in **Sanjay Damodar Kale v. Kalyani Sanjay Kale 2020 SCC Online Bom 694** while relying upon the judgment in **Sunita Kachwaha (supra)**, held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.

94. An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in **Chander Prakash Bodhraj v. Shila Rani Chander Prakash, AIR 1968 Delhi 174**. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the Court.

95. This Court in **Shamima Farooqui v. Shahid Khan (2015) 5 SCC 705** cited the judgment in **Chander Prakash (supra)** with approval, and held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife.

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7.2. There is no clinching material/evidence available, at this stage, which may indicate that the petitioner-father does not have substantial means of earning. The upbringing of the child, born out from the wedlock between the parties, is the joint responsibility of both the father and the mother. Even if the mother is having some income, the father does not *ipso facto* get absolved from contributing towards the proper upbringing and maintenance expense of the child on this account. The welfare of the child, requires the joint support of both the parents, ensuring that all necessary expenses are met for the holistic development of the child. Therefore, the financial contribution of the father alongwith mother remains essential, as it is integral to the child's stable and balanced growth. Hence, at this juncture, the contentions raised by learned counsel for the petitioner in the present petition with regard to factual aspect, are matter of trial and no ratiocination on the same can be made at this stage. The same can be ascertained only after adducing evidence by the parties. It is also apparent from the record that the order under challenge is only interim in nature and not a final decision of the maintenance petition. The amount of maintenance awarded is always subject to the adjustment which will depend on the final outcome of the maintenance petition filed by the respondent/son through his mother (wife of the petitioner).



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8. Considering the facts and circumstances of the case, the amount of Rs.10,000/- per month, which has been directed to be paid by the petitioner (herein) to the respondent-minor child, vide the impugned order cannot be said to be on the higher side and is rather just and appropriate in the facts/circumstances of the case.
9. In view of above, the interim maintenance granted by the Family Court does not call for any interference. Accordingly, the instant petition is hereby dismissed.
10. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case and the Family Court shall proceed further, in accordance with law, without being influenced with them.
11. As the main petition has been decided on merits, no order is required to be passed in the accompanying application, if any.

(SUMEET GOEL)
JUDGE

December 11, 2024
Ajay

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No