



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

114

CRR(F)-1555-2024 (O&M)
Date of Decision: 09.12.2024

Amit Kumar Jha Petitioner

Versus

Rakhi Jha and another Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Aruz Khan, Advocate for
Mr. Arnav Sood, Advocate
for the petitioner.

NIDHI GUPTA, J. (ORAL)

CRM-48638-2024

Prayer in this application filed under Section 5 of the Limitation Act, 1963 is for condonation of delay of 26 days in filing the accompanying revision.

Heard.

For the reasons mentioned in the application which is supported by an affidavit of the applicant/petitioner, the same is allowed and delay of 26 days in filing the accompanying revision is condoned.

CRR(F)-1555-2024

Challenge in the present petition is to the order dated 02.08.2024 passed by learned Additional Principal Judge, Family Court, Faridabad whereby in a proceeding under Section 125 Cr.P.C., the petitioner has been



directed to pay interim maintenance of Rs.18,000/- p.m. (Rs.10,000/-p.m. to the respondent No.1-wife and Rs.8,000/-p.m. to respondent No.2-minor son) from the date of filing of the application till disposal of the main petition, along with litigation expenses of Rs.11,000/-.

2. Learned counsel for the petitioner *inter alia* submits that the said maintenance is on the higher side as the salary of the petitioner is only about Rs.60,000/- p.m.; of which he has been directed to pay Rs.18,000/- p.m. to the respondents. It is further submitted that the respondents are not entitled to maintenance in view of the fact that it was the respondent herself who had left the matrimonial home without sufficient cause. In this regard, the petitioner had even moved a complaint dated 31.07.2022 (Annexure P-3) registered by the petitioner before the Police Station Incharge, Kasarvadavli Police Station, Thane (W). It is accordingly contended that as per the provision of Section 125(4) Cr.P.C., the respondents are not entitled to maintenance.

3. It is thirdly contended by learned counsel for the petitioner that the maintenance is not payable as the respondent No.1 is a qualified MBA. As such, she is not entitled to maintenance. It is accordingly prayed that the present petition be allowed, and the impugned order be set aside.

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

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

6. Perusal of record of the case shows that the petitioner was married to the respondent No.1 on 10.07.2016. One child/respondent No.2 was born out of their wedlock on 29.10.2017, who is admittedly in the care and custody of respondent No.1. Due to matrimonial discord, parties are



living separately since 27.07.2022. The present petition under Section 125 Cr.P.C. (Annexure P-1) was filed by the respondents on 10.10.2022.

7. It is the contention of the petitioner that the respondents are not entitled to maintenance as the petitioner is earning only about Rs.60,000/- p.m. of which he has been directed to pay ₹18,000/- per month to the respondents. However, the said argument of the petitioner is liable to be rejected as a perusal of the Affidavit of Income, Assets and Liabilities (Annexure P-5) filed by the petitioner before the learned Family Court, shows that the petitioner is a graduate in Arts and working in M/s. Reliance Retail Ventures as Operation Manager; and drawing a salary of Rs.59,460/- p.m. Admittedly too, the petitioner is able-bodied. Furthermore, in view of the admitted relationship between the parties, the petitioner cannot be absolved of his moral and legal responsibility of maintaining the respondent. Moreover, the Hon'ble Supreme Court in "**Shamima Farooqui v. Shahid Khan**" (SC): **Law Finder Doc Id # 661024**, has held that: –

"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."

8. It is the next contention of the petitioner that the respondent had left the matrimonial home on her own accord without sufficient cause; and therefore, as per the provision of Section 125 (4) Cr.P.C., she is not entitled to maintenance. In this regard, learned counsel for the petitioner has also



referred to complaint dated 31.07.2022 (Annexure P-3) filed by the petitioner before the Police Station Incharge, Kasarvadavli Police Station, Thane (W), the relevant part of which reads as under: -

“.....on 27/07/2022 at around 8 p.m. I was not at home. When I came home, I found the door closed. After some time, I came to know from different sources that 4-5 people had come to my house and my wife and child were seen leaving with them. I immediately lodged a complaint about my wife and child being missing at the police station. At that time, I was very restless and nervous. When I opened the door of my house, some luggage was missing, and the cupboard was open. All the jewellery was missing from the cupboard, along with ₹26,000/- which was for some important work was also missing.”

9. It can be termed as odd that when the petitioner was told that his wife and child were seen leaving with 4-5 people, he did not immediately contact the parents of the respondent no.1. Be that as it may, it is very clear that at this stage, it is not for this Court to enquire, examine, let alone return any finding in respect of the contention of the petitioner that the respondent had left the matrimonial home without sufficient cause. The correctness of the above said allegations made by the petitioner can only be established upon trial. At this stage, even the complaint dated 31.07.2022 (Annexure P-3) has to be proven in accordance with law, before any conclusion can be drawn regarding whether the respondent is entitled to maintenance or not in terms of Section 125(4) Cr.P.C.

10. The third contention on the part of the petitioner is that the respondent is not entitled to maintenance as she is a qualified MBA; working as a Freelancer and earning about Rs.30,000/- to 40,000/- p.m. The said argument of the petitioner is liable to be rejected in view of judgment of the



Hon'ble Supreme Court in "**Chaturbhuj Vs. Sitabhai**" Law Finder Doc ID # **135040**, wherein it has been held that merely because the wife is earning something does not imply that she is not entitled to maintenance; and had granted maintenance of Rs.3,000/- per month to respondent No.1/wife. In this regard, reliance may also be placed upon judgment of this Court in "**Divesh Sapra Vs. Latika Sapra & Another**" CRR-F-1834-2023 and CRR-F-587-2024 decided on 15.10.2024, wherein it has been held by a Coordinate Bench of this Court that a professionally qualified wife cannot automatically be denied maintenance; and the entire facts and circumstances of each case have to be taken into consideration at the time of granting and determining quantum of maintenance. In the present case, the relevant factor is that the minor child is admittedly in the care and custody of the respondent no.1. As such, she is responsible not just for his emotional, mental and physical welfare, but also has to provide for the day-to-day needs as well as for the school fees, transportation fees, extra-curricular activities, sports training, and for the overall and healthy development of the son. The entire burden/responsibility cannot be shouldered single-handedly by the respondent no.1. The petitioner, being the father is liable to contribute, at least financially in the upbringing of his child.

11. It is by now a settled trend that in matters of maintenance such as the present one, the husband tries to depict his income on the lower side, whereas the wife attempts to show an exaggerated income of the husband. The truth usually lies somewhere in between. In any event, 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.

12. 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...”

13. 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...”

14. 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.

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

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

17. However, nothing stated hereinabove shall be construed as an expression of opinion on the merits of the matter.

09.12.2024
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No