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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-1574-2024 (O&M)

Date of decision: 16.12.2024

Gurpreet Kaur @ Shelly and others

... Petitioners

Vs.

Parminder Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Veneet Sharma, Advocate
for the petitioners.

Mr. G.B.S. Dhillon, Advocate
for the respondent.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been preferred against the impugned order dated 16.10.2024 passed by learned Additional Principal Judge, Family Court, Amritsar, vide which the application filed by the petitioners seeking summoning of the witnesses against diet money, in the proceedings initiated under Section 125 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') [now Section 144 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS')], was dismissed.

2. The marriage between petitioner No.1 and the respondent was

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solemnized on 22.12.1996 according to Hindu rites and rituals. Out of this wedlock, three children i.e. Harleen Kaur, who is now 20 years of age and petitioners No.2 & 3, who are now aged about 15 years and 13 years, respectively, were born. However, matrimonial dispute ensued between the couple and the petitioners initiated proceedings under Section 125 of Cr.P.C. (*now Section 144 of BNSS*) seeking maintenance. Learned Family Court, vide order dated 15.09.2018, granted interim maintenance in favour of the petitioners.

3. Thereafter, the case was adjourned multiple times on one pretext or another. On 24.09.2024, petitioner No.1 filed an application seeking permission to summon witnesses which was dismissed vide impugned order dated 16.10.2024 and the evidence of the petitioners was closed by order. Aggrieved by the same, the petitioners have approached this Court by filing the present petition.

4. Learned counsel for the petitioners, *inter alia*, contends that learned Family Court is conducting the proceedings under Section 125 of Cr.P.C. (*now Section 144 of BNSS*) without following the detailed guidelines issued by the Hon'ble Supreme Court in ***Rajnish Vs. Neha and another, (2021) 2 SCC 324***. The evidence of the petitioners was closed by order and their application to summon witness was rejected vide impugned order dated 16.10.2024, which would cause a great prejudice to them. Further, affidavits

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of the parties with regard to their assets, income and liabilities were not called for by learned Family Court at any stage.

4. Notice of motion.

5. At this stage, Mr. G.B.S. Dhillon, Advocate appearing on behalf of the respondent and files his *Vakalatnama* in the Court today, which is taken on record. Registry is directed to tag the same at the appropriate place on the case file.

6. Learned counsel for the respondent submits that the petitioners, after filing of the application under Section 125 of Cr.P.C. (*now Section 144 of BNSS*), were given 44 opportunities to lead the evidence, which includes last opportunity as well. However, the petitioners chose not to adduce evidence and kept on delaying the case, as they have been granted interim maintenance already.

7. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the matter was adjourned multiple times due to COVID-19 pandemic or in order to explore possibilities of amicable settlement. It must be remembered that the proceedings under Section 125 Cr.P.C. *now Section 144 of BNSS*) are summary in nature. In view of the fact that the petitioners are the claimants and the provision under Section 125 Cr.P.C. serves a social purpose, this Court is of the considered opinion that, as far as possible, efforts must be



made to ensure that the parties involved are allowed to present the best available evidence as that would lend credibility to the judicial proceedings. Denial of an opportunity to any party to present the best available evidence or have an effective and substantial hearing, in order to prove its case would be in direct violation of their right to free and fair trial enshrined under Article 21 of the Constitution of India as well as the principles of natural justice.

8. The Courts are required to conduct the maintenance proceedings, while being alive to the legislative intent behind the provision under Section 125 of 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. 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.”

Reliance in this regard can also be placed on the judgment rendered by the Hon'ble Supreme Court in ***Kirtikant D. Vadodaria Vs. State of Gujarat (1996) 4 SCC 479***.

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9. While dealing with the issue of maintenance *in extenso*, a two Judge bench of the Hon'ble Supreme Court in **Rajnish**'s case (*supra*), 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.

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***(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. A perusal of the record would also indicate that learned Family Court proceeded to grant interim maintenance to the petitioners without obtaining the requisite affidavits of the parties, declaring their assets, income and liabilities, as mandated by the Hon'ble Supreme Court in ***Rajnesh***'s case (*supra*).

14. In view of the facts and circumstances of the case, present revision petition is disposed of in the following terms:

- (i) The matter is remanded back to the learned Family Court, Amritsar, with a direction to provide two effective opportunities to the petitioners to lead their evidence, subject to payment of Rs. 2,000/- to

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the respondent.

(ii) The learned Family Court is also directed to obtain affidavits of the parties regarding their income, assets and liabilities and conduct proceedings under Section 125 Cr.P.C. (*now Section 144 of BNSS*) strictly in compliance with the guidelines issued in ***Rajnish's*** case (*supra*).

(iii) Till the proceedings under Section 125 of Cr.P.C. are concluded, the respondent will continue to pay the interim maintenance awarded to the petitioners by learned Family Court, vide order dated 15.09.2018.

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

16. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and learned Family Court shall proceed without being prejudiced by observations of this Court.

[HARPREET SINGH BRAR]
JUDGE

16.12.2024
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No