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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-586-2025(O&M)
Date of Decision: 04.03.2025

Chirag Kapoor

....Petitioner

Versus

Nancy and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Angel Sharma, Advocate, for the petitioner.

JASGURPREET SINGH PURI, J. (Oral)

1. The present revision petition has been filed challenging the order dated 28.11.2024 passed by learned Additional Sessions Judge, Chandigarh, vide which the learned Revisional Court has allowed the revision petition of the respondent-wife and has modified the interim maintenance granted to the respondent-wife and minor child who is of the age of 4 years.

2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is the husband and respondent No.1 is his wife regarding which there is no dispute. Respondent No.2 is a female child of the age of 4 years who was born from the wedlock of the petitioner and respondent No.1 regarding which also there is no dispute. He submitted that the petitioner and respondent No.1 got married to each other on 09.03.2019 and respondent No.2 was born out of the wedlock on 06.01.2020 and after few years a matrimonial dispute arose between the parties and thereafter, respondent No.1 and 2 started residing separately from the petitioner at the parental home of respondent No.1. He further submitted that respondent No.2 is of the age of 4 years and is under



the care and custody of respondent No.1-wife and they filed a petition under Section 125 of the Code of Criminal Procedure against the petitioner in which an application for grant of interim maintenance was also filed. He submitted that learned Judicial Magistrate First Class, Chandigarh vide order dated 19.01.2022 allowed the application for grant of interim maintenance and granted an interim maintenance of Rs.9,000/- per month to respondent No.1-wife and Rs. 6,000/- per month to respondent No.2-minor child and in this way, total amount of Rs. 15,000/- per month as interim maintenance was awarded by the learned Judicial Magistrate First Class, Chandigarh to the respondents. He submitted that the petitioner has been paying the aforesaid maintenance from time to time. However, the respondents filed a revision petition assailing the aforesaid order dated 19.01.2022 before the learned Additional Sessions Judge, Chandigarh which was allowed by way of impugned order and the interim maintenance has been enhanced to the tune of Rs.18,000/- per month for respondent No.1-wife by way of modification of the order and Rs.10,000/- per month for respondent No.2-child and therefore, total amount of interim maintenance of Rs.28,000/- per month has now been fixed by way of aforesaid impugned order passed by the learned Additional Sessions Judge, Chandigarh in revision petition.

3. Learned counsel submitted that challenge in the present revision petition is only to the aforesaid order passed by the learned Additional Sessions Judge, Chandigarh, vide which the amount of interim maintenance was enhanced and no challenge has been laid to the order passed by the learned Judicial Magistrate First Class, Chandigarh because the aforesaid order has been accepted by the petitioner and he has been regularly paying the amount of maintenance so fixed.

4. Learned counsel also submitted that the learned Judicial



Magistrate First Class, Chandigarh has referred to the respective affidavits of declaration of assets and liabilities of both the petitioner and respondent No.1-wife. He submitted that so far as respondent No.1-wife is concerned, as per her affidavit, she has no source of income and she has got no movable or immovable property and the petitioner-husband has also not disputed the same. He submitted that the minor child is in the care and custody of respondent No.1-wife regarding which also there is no dispute. He submitted that so far as the petitioner-husband is concerned, he is agitating the quantum of maintenance which has been enhanced by the learned Revisional Court. He submitted that in the affidavit which was filed by the petitioner-husband regarding declaration of his assets and liabilities, his income was shown to be Rs. 61,769/- per month because the petitioner is working in the Office of Assistant Commissioner of Customs, Preventive (General) as Inspector (PO), Zone 1, Mumbai and there is no dispute that his income was Rs. 61,769/- per month out of which learned Judicial Magistrate First Class fixed an amount of Rs. 15,000/- per month as total interim maintenance i.e. Rs.9,000/- per month for respondent No.1-wife and Rs.6,000/- per month for respondent No.2-child.

5. Learned counsel submitted that when the aforesaid order was assailed by the respondent-wife for the purpose of enhancement of the interim maintenance, the income of the petitioner at that point of time as per the order passed by the learned Additional Sessions Judge, Chandigarh by referring to the salary slips of the petitioner for the month of September, 2021 and November, 2021 was shown to be Rs.80,558/- per month and Rs.82,136/- per month respectively and in this way, the interim maintenance was increased to Rs.18,000/- per month + Rs.10,000/- per month = Rs. 28,000/- per month. He submitted that at the most, the total maintenance for both respondent No.1-wife and respondent No.2-minor child has to be fixed



around 25% of the total monthly income of the petitioner-husband as a basic criteria but there was no justification or any reason for enhancement of the interim maintenance by the learned Revisional Court. He submitted that out of the total amount of Rs. 82,136/- per month, as per the salary slip for the month of November, 2021 which has been so referred to by the learned Additional Sessions Judge, Chandigarh, 25% of the aforesaid would come to total of Rs.20,000/- and therefore, at the most the total maintenance for both the wife and the child could not have exceeded Rs. 20,000/- per month, whereas now it has been fixed as Rs. 28,000/- per month. He submitted that in view of the aforesaid facts and circumstances, the impugned order passed by the learned Additional Sessions Judge, Chandigarh, vide which the interim maintenance was enhanced may be set aside. He also submitted that when learned Revisional Court allowed the petition of the respondent-wife then the aforesaid amount was enhanced from the date of the filing of the original application, whereas it may have if at all had to be allowed, then it ought to have been allowed from the date of the decision in the revision petition and therefore, on that ground also, the order passed by the learned Revisional Court was erroneous.

7. I have heard the learned counsel for the petitioner.

8. The marriage between the petitioner-husband and respondent No.1-wife is not in dispute. Respondent No.2 is minor child of the age of 4 years born out of the wedlock and that is also not in dispute. The child is in the care and custody of respondent No.1-wife is also not in dispute. The interim maintenance which was granted by the learned Judicial Magistrate First Class, Chandigarh to the tune of Rs. 9,000/- per month + Rs. 6,000/- per month for the wife and child respectively is also not disputed by the learned counsel for the petitioner because only the order passed by the learned Revisional Court, vide which total maintenance has been enhanced from Rs. 15,000/- per month to



Rs. 28,000/- per month as aforesaid is under challenge in the present petition.

9. A perusal of the order passed by the learned Judicial Magistrate First Class, Chandigarh and also by learned Additional Sessions Judge, Chandigarh would show that respondent No.1-wife has got no source of income, even as per the affidavit which she has filed. This fact has also not been disputed by the learned counsel for the petitioner in the present petition. She is taking care of a female child of the age of 4 years, who is now ready for her education especially the primary education. So far as the petitioner is concerned, at the time when learned JMFC passed the order his earlier record of salary was shown to be Rs. 61,769/- per month as per his salary slip and when learned Revisional Court passed the order, vide which the interim maintenance has been enhanced, salary slips of the petitioner for the month of September, 2021 and November, 2021 were considered in which his salary was shown to be Rs.80,558/- per month and Rs. 82,136/- per month respectively. Learned Revisional Court passed the order of modification on 28.11.2024 and by that point of time i.e. after about three years of the aforesaid salary slips which are shown to be of the year 2021, the income of the petitioner must have increased substantially which although not on the record.

10. This Court will therefore consider two aspects. Firstly, the quantum of interim maintenance and secondly, as to whether in the facts and circumstances, the petitioner should have preferred the present revision petition challenging the interim maintenance or not.

11. So far as the first aspect is concerned, admittedly, respondent No.1-wife is not working and has no source of income and she is having care and custody of the minor female child of the age of 4 years. The income of the petitioner, who is working in the Office of Assistant Commissioner of



Customs, Preventive (General) as Inspector (PO), Zone 1, Mumbai was about Rs.82,000/- per month in the month of November, 2021 as per the order passed by the learned Revisional Court and in this way, the income of the petitioner presumably ought to have been between Rs.90,000/- per month to Rs.1,00,000/- per month at the time when aforesaid impugned order was passed. An argument was raised by the learned counsel for the petitioner that the learned Courts when fixing the maintenance or interim maintenance have to stick to the parameters that the maintenance fixed cannot exceed 25% of the total salary of the husband. However, this Court is of the considered view that there is no straightjacket formula regarding fixation of any percentage. Pigeon-hole theory does not apply to the grant of interim maintenance or while deciding a petition under Section 125 Cr.P.C. Learned Family Court or the Court considering the maintenance or interim maintenance under Section 125 Cr.P.C. has to consider the facts and circumstances of each and every case. The facts and circumstances of the present case suggest that the respondent-wife is not working and is having the care and custody of a minor female child of the age of 4 years. The social status of the family is also on a little bit higher pedestal because the petitioner is working in the Office of Assistant Commissioner of Customs, Preventive (General) as Inspector (PO), Zone 1, Mumbai and his salary is also very comfortable and is ought to be somewhere around Rs.90,000/- per month to Rs.1,00,000/- per month. Considering the facts and circumstances of the present case, there is no ground for interference or even to suggest that the aforesaid interim maintenance which has been fixed or enhanced by the learned Additional Sessions Judge, Chandigarh to the tune of Rs.18,000/- per month and Rs.10,000/- per month for the respondent-wife and minor



female child of the age of 4 years, respectively, totalling Rs.28,000/- per month can be said to be on the higher side. It is not only a statutory duty of the petitioner-husband but it is also a moral and social obligation which is cast upon the petitioner-husband to maintain his wife and child especially when the wife is not working and is having no source of income. Learned Judicial Magistrate First Class, Chandigarh granted total amount of Rs.15,000/- per month as interim maintenance i.e. Rs.9,000/- per month for the respondent-wife and Rs.6,000/- per month for the child which is clearly on the lower side and considering the price index and inflationary tendencies apart from the fact that the child is now ready for education purposes and the enhanced interim maintenance which has been fixed by learned Revisional Court is perfectly in accordance with law and also in view of the facts and circumstances of the present case, no fault can be found in fixation of the aforesaid quantum.

12. So far as the second aspect is concerned, the petitioner-husband is an earning hand and is working in the Office of Assistant Commissioner of Customs, Preventive (General) as Inspector (PO), Zone 1, Mumbai. The respondent-wife is not working and the minor female child of the age of 4 years is in the care and custody of respondent-wife. The petitioner-husband has challenged the interim maintenance granted and not the final maintenance. This Court is also of the considered view that in the given facts and circumstances, the petitioner-husband has in fact perpetuated the litigation. Had it been a case that the petitioner had challenged the final order fixing the final maintenance then it would have been a different situation but in the given facts and circumstances of the present case where



most of the facts are not in dispute pertaining to income etc. the petitioner has only perpetuated litigation by filing the present revision petition against an interim maintenance order.

13. In view of the aforesaid facts and circumstances of the present case, the present revision petition is hereby dismissed with Rs.50,000/- as costs which shall be paid by the petitioner-husband to the respondent-wife, within a period of three months from today. The aforesaid costs shall be deposited before the learned Judicial Magistrate First Class, Chandigarh within the aforesaid period of three months from today and on his depositing the aforesaid amount, the learned Judicial Magistrate First Class, Chandigarh shall transmit the same to the respondent-wife in her name. In case the aforesaid amount of costs is not deposited by the petitioner within the aforesaid period of three months then further necessary appropriate orders shall be passed including recovery of the same as arrears of land revenue etc. Learned Judicial Magistrate First Class, Chandigarh shall ensure that the aforesaid costs are paid by the petitioner-husband within the aforesaid stipulated period and in default of the same, a report shall be sent to this Court in this regard.

04.03.2025

rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking
Whether reportable

: Yes/No
: Yes/No