



CRR(F)-561-2018 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR(F)-561-2018 (O&M)

Date of Decision: 20.01.2025

Kamla Devi

...Petitioner

Versus

Dharam Pal Singh and another

...Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Sandeep K. Sharma, Advocate
for the petitioner

None for the respondent.

KIRTI SINGH, J.(Oral)

Prayer in the present revision petition is for quashing the impugned order dated 29.09.2018 passed by the Court of Id. Additional Principal Judge, Family Court, Rohtak whereby application under section 125 Cr.P.C. for maintenance was dismissed.

2. Brief facts germane to the instant petition are that the marriage of the petitioner and respondent no. 1 was solemnized in March 1997, however, as a result of matrimonial dispute, the petitioner filed a petition under Section 125 Cr.P.C. seeking maintenance from respondent Nos. 1 and 2 i.e. her husband and son, which was duly contested by them. The learned Family Court vide order dated 29.09.2018 dismissed the application for interim maintenance filed by the petitioner and being aggrieved from the same, she has approached this Court by way of the present petition.

3. Learned counsel for the petitioner inter alia contends that the learned

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Court below has fallen into grave error by presuming that the petitioner is working and hence does not require any maintenance from the respondents. The main objective behind the enactment of the provisions contained under Section 125 Cr.P.C. is to provide summary and speedy assistance to the dependent, in order to secure the ends of social justice. The petitioner being an old ailing lady, is unable to work to be able to sustain herself and her divorced daughter, whereas respondent no. 1 is enjoying pension from the Army as also the Haryana government and respondent no. 2 is serving in Haryana Police. It is settled law that it is the responsibility of the husband to maintain his wife even in cases where the wife has means of income and therefore, denial of maintenance to the petitioner would defeat the constitutional sweep of Article 15(3) and 39 of the Constitution of India.

4. The legislative intent behind the provision under Section 125 Cr.P.C in its true spirit, is to ensure speedy assistance and social justice for women, children and infirm parents, so that dependents are not reduced to destitution or vagrancy on account of failure of marriage. Besides this, it has been enacted to provide maintenance *pendente lite* to the applicant spouse during proceedings emerging out of matrimonial disputes so that the she/he can maintain herself/himself, have sufficient funds to pursue the litigation, and not suffer at the instance of the affluent spouse. However, there lies an implicit caveat to the same, whereby the Court has to strike a just and careful balance to ensure that this provision is not used as a weapon by one spouse to abuse the process of law and afflict the other with misery.

5. It was expressed by the Hon'ble Supreme Court in ***Vimala (K.) vs. Veeraswamy (K.) (1991) 2 SCC 375*** that, "3. Section 125 of the Code of Criminal

Procedure is meant to achieve a social purpose. The object is to prevent vagrancy



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and destitution. It provides a speedy remedy for the supply of food, clothing, and shelter to the deserted wife.”

6. In the landmark judgment of ***Rajnesh v. Neha and another (2021) 2 SCC 324***, the Supreme Court discussed the topic of maintenance extensively and in conclusion, laid down 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 set off, 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/


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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 order 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 read with Order XXI."

7. Insofar as the determination of the quantum of maintenance is concerned, it has been observed that often there exists a probability of amplification of needs by the wife and concealment of actual income by the husband, thereby making it difficult to ascertain the earning capacity of the rival claimants with precision. Therefore, in order for the Court to arrive at a just amount, it is incumbent upon the rival claimants to scrupulously bring on record their actual respective earning capacities. The adequacy of quantum so fixed

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life of reasonable comfort. It 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.

8. At this stage, only question of interim maintenance is decided against the petitioner and the parties are yet to prove their respective claims by adducing evidence.

9. On a perusal of the facts of the case, it transpires that the learned Court below has considered all the arguments as advanced by the petitioner while deciding the application for interim maintenance, wherein the factum of her running a grocery shop has been admitted by the petitioner. It was also not at dispute, as recorded in the dismissal order, that the petitioner had loaned out a sum of Rs.16,00,000/- and earned interest on it to the tune of Rs. 6,00,000/-. A well reasoned order, after duly considering the material placed before it, was passed by the learned Court below and learned Counsel for the petitioner has not been able to indicate perversity in the impugned order which warrants interference by this Court. As a fallout, the present petition is dismissed, being bereft of any merit.

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

11. Pending application(s), if any, also stands disposed of accordingly.

20.01.2025

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Whether speaking/reasoned
Whether reportable

**(KIRTI SINGH)
JUDGE**

Yes/No
Yes/No