



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

245(2 cases)

1.

CRR-1992-2022(O&M)
Reserved on : 25.04.2025
Pronounced on: 20.05.2025

VIPUL GUPTA

..... Petitioner

VERSUS

HEENA JAIN

..... Respondent

2.

CRR-2283-2022(O&M)

HEENA JAIN

..... Petitioner

VERSUS

VIPUL GUPTA AND ORS.

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Vishal Aggarwal, Advocate
for the petitioner in CRR-1992-2022
for the respondent No.1 in CRR-2283-2022.

Mr. Bharat Bir Singh Sobti, Advocate (through VC)
and Ms. Savpreet Gujral, Advocate
for the respondents in CRR-1992-2022
for the petitioner in CRR-2283-2022.

KIRTI SINGH, J.(Oral)

Challenge in both the petitions is to the order dated 17.11.2021 passed by the learned Judicial Magistrate First Class, Ludhiana and the order of the learned Additional Sessions Judge, Ludhiana dated 02.08.2022 passed in appeal, and thus, they are being decided by way of a common judgment. For brevity, facts are being taken from CRR-1992-2022.

2. The brief factual matrix relevant for the adjudication of the present case is that the marriage of the petitioner and the respondent was



solemnized on 25.11.2017, it being the second marriage of both the parties. Matrimonial disputes ensued between them, whereafter the respondent filed three complaints against the petitioner levelling allegations of cruelty and harassment therein, which though were subsequently consigned to record. The parties started residing separately since 07.11.2019 and a divorce petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as HMA), was filed by the petitioner on 16.12.2019. Thereafter on 05.02.2020, the respondent filed a complaint under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as DV Act) against the petitioner and his family members, wherein the impugned order dated 17.11.2021 was passed and the petitioner was directed to pay to the respondent maintenance *pendente lite* to the tune of Rs.40,000/- per month alongside Rs.35,000/- to be paid as rental allowance. Appeal against the said order was preferred by both the parties and therein, by way of order dated 02.08.2022, the amount of maintenance was enhanced to Rs.1,65,000/- while the rental allowance was sustained at Rs.35,000/-. Aggrieved by the same, the present petition has been preferred.

3. Learned counsel for the petitioner *inter alia* contends that the cumulative quantum of interim maintenance, which was already fixed at an excessive amount of Rs.75,000/- was enhanced to Rs.2 lakhs by the learned ASJ, wrongly assessing the monthly income of the petitioner as Rs.3 lakhs and also *suo motu* assuming and computing the undistributed/unannounced profits of the company of which the petitioner is the director and shareholder to the extent of 5%. While contending that the legislative intent of the provision of interim maintenance was to provide support and necessary expenses in the proceedings, it is submitted that the respondent has failed to justify the need for such an exorbitant amount as maintenance. It is the further submission of the learned counsel that the respondent is a well qualified woman who was, prior to marriage, residing in Switzerland and



earning up to Rs.4 lakhs per month when computed in the Indian currency, which she had given up before she even met with the petitioner. The respondent, who had also received a huge amount as permanent alimony from her previous marriage, has since remained willfully unemployed and is thus, not entitled to any maintenance. In fact, the respondent also had a property having a registered value of Rs.35 lakhs in her name, which she gifted to her father and transferred the ownership in 2019, and a sum of Rs.65 lakhs was also transferred by the respondent to her mother, in order to conceal her assets. Learned counsel submits that the petitioner is at present drawing a salary of about Rs.1 lakh per month. Even otherwise, as per the previous income tax returns of the petitioner, he was paying an income tax of Rs.9 lakhs on an income of three lakhs per month and thus if he is directed to pay Rs.24 lakhs per annum as maintenance to the respondent, then the petitioner would be left with nothing. Further, since the respondent is residing with her parents in Ludhiana, thus the grant of rent allowance to the tune of Rs.35,000 is also unjust. Even otherwise, no justification has been advanced as to why the respondent requires a hefty sum of Rs.2 lakhs as maintenance. Attention of this Court is also drawn to the fact that the allegations levelled by the respondent in her previous complaints have been found to be false and frivolous for which Kalandra proceedings have also been initiated against her.

3. Per contra learned counsel for the respondent vehemently opposes the submissions made on behalf of the petitioner. The first objection raised is that in the impugned order there are three more accused respondents besides the petitioner herein who have not been made a party to the petition. Submitting about the status of the respondent, learned counsel submits that she, who had a well-paying job and even the permanent residency of Switzerland prior to the solemnization of her marriage with the petitioner, was subjected to numerous instances of domestic abuse and



harassment. Insofar as the qualifications of the respondent are concerned, learned counsel submits that she obtained a diploma in Business with Marketing and Management in French language after completing a one year course which is recognized only in that country. As such, the educational qualification of the petitioner can be deemed to be 10+2. Moving on to the quantum of maintenance awarded to the respondent, it is the submission of the learned counsel that the respondent has been rightly awarded the enhanced amount of Rs.2 lakhs in toto as interim maintenance, keeping in view the lifestyle that she was accustomed to at her matrimonial home, which as admitted by the petitioner was luxurious. The petitioner is a shareholder of the company owned and run by his family. It is also contended that in order to evade his duty to maintain the respondent, the petitioner tried to manipulate the figures he was earning which was duly observed by the learned JMJC in the impugned order dated 17.11.2021, that as per his ITR for 2015-16, the petitioner herein had a gross salary of Rs.36 lakhs, however the same was shown to have reduced to Rs.18 lakhs per annum in the ITR filed for 2019-20, and the balance amount was adjusted in the incomes of the parents of the petitioner, which were increased by Rs.9 lakhs each. Further, it is submitted that the petitioner is in arrears of maintenance since 06.05.2023, raking up the total unpaid amount as Rs.44 lakhs for which he is already facing contempt proceedings before this Court in COCP-2938-2024.

4. Heard the contentions advanced by the learned counsel for the parties and perused the judicial file.

5. Pursuant to the petition filed by the respondent under the DV Act, she was granted interim maintenance to the tune of Rs.40,000 per month alongside Rs.35,000/- to be paid as rental allowance, which was enhanced in appeal to Rs.1,65,000/- while the rental allowance was sustained at Rs.35,000/-. Whether the respondent is entitled to maintenance



is not a point which needs adjudication since the relationship between the parties is not in question, and prima facie there are allegations of domestic violence against the petitioner. Further, the contention of the petitioner that the respondent is a well-qualified woman who is willfully remaining unemployed also does not stand on any firm footing since it is settled law that the mere fact that an aggrieved person is capable of earning cannot be made the solitary basis to deny maintenance.

6. The objective of granting maintenance under the DV Act is for providing financial support or monetary relief to the aggrieved person and their children if any, including but not limited to covering expenses such as medical treatment, loss of earnings, and damage to property resulting from domestic violence. The amount of maintenance granted should be adequate, fair, reasonable and consistent with the standard of living to which the aggrieved person is accustomed. Further, unlike Section 125 Cr.P.C, the quantum is not solely contingent upon the ability of the wife/victim to maintain herself as was also the observation of the Delhi High Court in *Shri Sudhanshu Jaggi and others Versus State (Government of NCT of Delhi) and another*, CRL.REV.P. 1083/2023 decided on 9, September 2024.

7. In the opinion of this Court, while fixing the amount of maintenance, it must be ensured that the provision which is aimed at providing relief to the aggrieved person does not degenerate into a weapon to punish the other side. The quantum of maintenance must be justifiable and realistic, avoiding the occurrence of two extremes where maintenance is either paltry or extravagant, to ensure that neither of the parties is reduced to a life of penury. The yardstick to determine the adequacy of maintenance allowance is the ability of the aggrieved person to lead a life of reasonable comfort to which they are accustomed.

8. The Hon'ble Supreme Court in *“Rajnish Vs. Neha and another” (2021) 2 SCC 324* laid down a comprehensive framework



regarding the grant of maintenance under various statutes. Qua the quantum of maintenance it was held that:

“III Criteria for determining quantum of maintenance

(i) The objective of granting interim/permanent alimony is to ensure that the dependant spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

*82. The factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependant children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife. Refer to **Jasbir Kaur Sehgal v. District Judge, Dehradun & Ors. (1997) 7 SCC 7**. Refer to **Vinny Paramvir Parmar v. Paramvir Parmar (2011) 13 SCC 112**.*

*83. In **Manish Jain v. Akanksha Jain (2017) 15 SCC 801** this Court held that the financial position of the parents of the applicant-wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the Court should mould the claim for maintenance based on various factors brought before it.*

*84. On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependant family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications. **Reema Salkan v. Sumer Singh Salkan (2019) 12 SCC 303**.*

*(ii) A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. **Chaturbhuj v. Sita Bai (2008) 2 SCC 316**.*

85. The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife



should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

(iii) Section 23 of HAMA provides statutory guidance with respect to the criteria for determining the quantum of maintenance. Sub-section (2) of Section 23 of HAMA provides the following factors which may be taken into consideration : (i) position and status of the parties, (ii) reasonable wants of the claimant, (iii) if the petitioner/claimant is living separately, the justification for the same, (iv) value of the claimant's property and any income derived from such property, (v) income from claimant's own earning or from any other source.

(iv) Section 20(2) of the D.V. Act provides that the monetary relief granted to the aggrieved woman and/or the children must be adequate, fair, reasonable, and consistent with the standard of living to which the aggrieved woman was accustomed to in her matrimonial home.

*(v) The Delhi High Court in **Bharat Hedge v. Smt. Saroj Hegde 40 (2007) DLT 16** laid down the following factors to be considered for determining maintenance :*

"1. Status of the parties.

2. Reasonable wants of the claimant.

3. The independent income and property of the claimant.

4. The number of persons, the non-applicant has to maintain.

5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.

6. Non-applicant's liabilities, if any.

7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.

8. Payment capacity of the non-applicant.

9. Some guess work is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.

10. The non-applicant to defray the cost of litigation.

11. The amount awarded under section 125 Cr.PC is adjustable against the amount awarded u/24 of the Act. 17."

(vi) Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable.

(a) Age and employment of parties

86. In a marriage of long duration, where parties have endured the relationship for several years, it would be a relevant factor to be taken into consideration. On termination of the relationship, if the wife is educated and professionally qualified, but had to give up her employment opportunities to look after the needs of the family being the primary caregiver to the minor children, and the elder members of the family, this factor would be required to be given due importance. This is of particular relevance in contemporary society, given the highly competitive industry standards, the separated wife would be required to undergo fresh training to acquire marketable skills and re-train herself to secure a job in the paid workforce to rehabilitate herself. With advancement of age, it would be



difficult for a dependant wife to get an easy entry into the work-force after a break of several years.”

9. Reverting to the case in hand, as per the affidavits of income, assets and liabilities of the petitioner, he has shown his monthly income in the period between April, 2020 to February, 2021 as Rs.1,22,761/- and expenditure as Rs.99,070/-; whereas the respondent in her respective affidavit stated that she has no current source of income and that her expenditure, which is close to Rs.2,00,000/- per month and is being borne by her father. The Court of JMIC Ludhiana arrived at the amount of maintenance at the rate of Rs.40,000/- per month alongside Rs.35,000/- to be paid as rental allowance, by assessing the salary of the petitioner as being Rs.36 lakhs per annum based on his ITR for 2015-16 and overlooking his ITR filed for 2019-20 in which his income, pending adjudication of the application under Section 12 of the DV Act against him, was shown as reduced to Rs.18 lakhs per annum. The amount of maintenance was enhanced by the learned Additional Sessions Judge, Ludhiana to a sum total of Rs.2 lakhs per month by taking into account the profits, a contingent source of income, earned by the company of which the petitioner is a 5% shareholder. As such this Court is of the view that no doubt the respondent is entitled to maintenance, nonetheless learned counsel appearing on her behalf has not been able to satisfy this Court qua the expenditures for which the respondent requires an amount of Rs.2 lakhs per month. Even if by overlooking the income of the petitioner, as mentioned in his affidavit so filed, and taking it to be Rs.36 lakhs per annum, in line with his ITR for 2015-16, the interim amount of Rs.75,000/- i.e. Rs.40,000 as maintenance and Rs.35,000/- as rental allowance is proportionate given the socio-economic position of both parties.

10. As a corollary, the interim maintenance amount awarded by the learned learned Judicial Magistrate First Class, Ludhiana is upheld and the impugned order of the learned Additional Sessions Judge whereby the maintenance amount was enhanced is set aside. The interim order passed by this Court dated 24.01.2023, which was explicitly and specifically stated to be a temporary arrangement to facilitate mediation between parties without having any bearing on the merits of the case, stands vacated.
11. The present petition stands disposed of in the above-said terms.
12. It is made clear that nothing observed hereinabove shall be construed as an expression of opinion of this Court lest it may prejudice the case. The learned Judicial Magistrate First Class, Ludhiana is directed to proceed with the case on its own merits and decide the application filed under the DV Act strictly in accordance with law.
13. Pending application(s), if any, also stands disposed of accordingly.

(KIRTI SINGH)
JUDGE

20.05.2025
Kavita

Whether speaking / reasoned
Whether Reportable

Yes/No
Yes/No