



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR(F)-677-2019 (O&M)

Date of Decision:-29.01.2025

Himanshu

.....Petitioner

Versus

Isha Sharma and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr Jagjeet Beniwal, Advocate for the petitioner.

Mr. Vikrant Rana, Advocate for respondents.

JASGURPREET SINGH PURI J.(Oral)

1. The present revision petition has been filed for setting aside the impugned order dated 16.08.2019 passed by learned Principal District Judge, Bhiwani, wherein learned Family Court had granted maintenance to respondent No.2 who is the minor daughter of the petitioner and respondent No.1, who are husband and wife.

2. Learned counsel appearing on behalf of the petitioner submitted that it is a case where both the respondents i.e.wife and minor daughter had filed a petition under Section 125 of the Cr.P.C. for the grant of maintenance which was decided by way of an impugned judgment dated 16.08.2019. He submitted that by way of the aforesaid judgment respondent No.1 has not been granted any maintenance as the same has been denied by learned Family Court. However, maintenance to the tune of Rs. 8,000/- per month has been granted to respondent No. 2-minor daughter, who at that time was about 10 years old and is now 16 years of age. He further submitted that the aforesaid



impugned order is erroneous and insofar as the present petitioner is concerned, he is not employed and has no source of income. Therefore, the aforesaid amount of Rs. 8,000/- per month is unsustainable and on the higher side. He submitted that the reason as to why respondent No.1-wife, was denied the aforesaid maintenance was that she was already employed as a medical officer having qualification of BA (MS) and was earning a salary of Rs. 32,975/- per month at the time of passing of the aforesaid judgment. Since the minor girl-respondent No. 2 is in care and custody of respondent No.1-wife, it is responsibility of the respondent-wife to maintain her and considering the fact that the petitioner although being the father of the girl, has no source of income, the aforesaid judgment passed by learned Principal Family Court is liable to be set aside

3. On the other hand, learned counsel appearing on behalf of the respondents submitted that, insofar as the respondent-wife is concerned, she was not granted any maintenance by learned Family Court through the aforesaid impugned judgment. However, she did not challenge the aforesaid judgment and accepted the same qua her but so far as the respondent-minor girl is concerned, who is now in Class 10th, the amount of maintenance granted to her was only Rs.8,000/-per month at that point of time but now with the passage of time and inflationary tendencies and particularly the fact that she is now in Class 10th and thereafter she has to pursue her professional and vocational courses, which require a lot of money, an amount of Rs. 8,000/- per month is rather on the lower side, although the same has not been challenged by her and the present petition is liable to be dismissed on the aforesaid ground. He further submitted that, insofar as the petitioner is



concerned, he is in fact working and earning money, but the same is not reflected anywhere on the record. He also submitted that the petitioner was admittedly working in a *mandir* and earning a significant amount of money of which there is no record. He further submitted that it is a settled law that if a father is an able bodied man having minor children then the mere fact that there is nothing on record to show that he is not working is of no relevance and it is not only a statutory obligation on him but also his moral obligation to maintain and support his children. Learned counsel referred to provision of Section 125 of Cr.P.C. in this regard. He also referred to a judgment of Hon'ble Supreme Court in the case of ***Anju Garg Vs. Deepak Kumar Garg, (2022) SCC Online SC 1314*** in this regard. He also submitted that the mere fact that respondent No. 1-wife is working and respondent No. 2-minor child is under the care and custody of respondent No. 1 does not mean that the entire maintenance should be borne solely by the wife. It is primarily the responsibility of the husband of respondent No.1 and father of respondent No. 2 to maintain the children. He also submitted that in today's time an amount of Rs.8,000/-per month cannot be said to be on the higher side.

4. Learned counsel for the respondents has also pointed out that after the passing of the aforesaid judgment, initially the petitioner had paid some money but thereafter the petitioner has stopped paying the maintenance to respondent No.2 and rather arrears amounting to more than Rs.3,00,000/- have accumulated and the petitioner has not only defaulted in the payment of the aforesaid amount, but execution proceedings are also pending and he is not even appearing before the concerned Court.



5. I have heard the learned counsels for the parties and have perused the impugned judgment.

6. Respondent No.1-wife and respondent No.2-who is the minor daughter filed the petition under Section 125 Cr.P.C. against the petitioner who is the husband of respondent No.1 and father of respondent No.2. Respondent No.1-wife was not granted maintenance because she was stated to be working and earning Rs.32,975/-per month at the time of passing of impugned judgment. So far as the petitioner (husband/father) is concerned, respondent No. 1-wife alleged that he is earning from employment in a *mandir*, but the petitioner-husband denied this by stating that his duty would begin only after 4-5 years and it is wrong that he is currently working. In this way, the income of the petitioner could not be ascertained by learned Family Court.

7. Further deliberating on the aforesaid issue, the provision of Section 125 of Cr.P.C. needs to be considered, and the same is reproduced as under :-

“125 Order for maintenance of wives, children and parents :- (1) If any person having sufficient means neglects or refuses to maintain--

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate



[***], as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

2[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation.--For the purposes of this Chapter,

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

1[(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.]

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each months [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.



Explanation.--If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section in living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

8. Hon'ble Supreme Court, in **Anju Garg vs. Deepak Kumar Garg's case (supra)**, observed regarding the issue that when the husband/father is an able-bodied man and even if he is not working, he is still bound to maintain his wife and children. The relevant portion of the aforesaid judgment is reproduced as under:-

10. *"This Court had made the above observations as the Court felt that the Family Court in the said case had conducted the proceedings without being alive to the objects and reasons, and the spirit of the provisions under [Section 125](#) of the Code. Such an impression has also been gathered by this Court in the case on hand. The Family Court had disregarded the basic canon of law that it is the sacrosanct duty of the husband to provide financial support to the wife and to the minor children. The husband is required to earn money even by physical labour, if he is an able-bodied, and could not avoid his obligation, except on the legally permissible grounds mentioned in the statute. In [Chaturbhuj vs. Sita Bai](#) (2008) 2 SCC 316, it has been held that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife, by providing her food, clothing, and shelter by a speedy remedy. As settled by this Court, [Section 125](#) Cr.P.C. is a measure of social justice and is specially enacted to protect women and children. It also falls within the Constitutional sweep of [Article 15\(3\)](#), reinforced by [Article 39](#) of the Constitution of India."*



9. After hearing learned counsels for the parties and perusing the impugned judgment, this Court is of the considered view that the present controversy now lies with regard to whether the grant of Rs. 8,000/- per month to Respondent No. 2, who is the minor daughter of the petitioner and was about 10 years old at the time of the passing of the impugned judgment and is currently about 16 years old, was justified or not. Although Respondent No. 2-minor daughter is in the care and custody of Respondent No. 1-wife who is also working, it does not mean that the petitioner can abdicate his responsibilities, which are not only statutory but also moral in nature, as aforesaid. The petitioner is an able-bodied man and is stated to be 39 years of age. The maintenance, which was fixed in 2019, was Rs. 8,000/- per month for the minor girl child, who is now in the 10th class. It can be safely presumed that after the 10th class, the child will need to pursue professional and vocational courses, and a significant amount of money will be required for further education of Respondent No. 2. The matter was also sent to the Mediation Centre of this Court, but as per the learned counsels for the parties, the mediation failed.

10. Considering the aforesaid facts and circumstances, where the petitioner is an able-bodied man but there is no proof of his income on record, and as per the aforesaid provision of Section 125 Cr.P.C. and the judgment of Hon'ble Supreme Court, it cannot be said that the amount of Rs.8,000/- per month fixed for Respondent No.2-minor daughter is excessive. Therefore, this Court does not find any illegality or perversity in the impugned judgment passed by learned Family Court .



11. Consequently, finding no merit in the present petition, the same is hereby dismissed.

(JASGURPREET SINGH PURI)
JUDGE

29.01.2025
shweta

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No