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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Sr. No.111**CRR(F)-1638-2024 (O&M)****Date of decision : 07.01.2025**

Surender, Advocate

..... Petitioner

VERSUS

Smt. Sita and another

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Sushil Sheoran, Advocate, for the petitioner.

KIRTI SINGH, J. (Oral)

1. The present petition has been preferred against order dated 17.09.2024 passed by learned Addl. Principal Judge, Family Court, Rohtak, in the proceedings under Section 127 of the Cr.P.C., vide which the maintenance awarded in favour of the respondents has been enhanced to the tune of Rs.10,000/-.

2. The brief facts of the case are that the marriage of the petitioner and respondent No.1 was solemnized on 06.04.2002 as per Hindu rites and ceremonies. One son i.e. respondent No.2 namely, Shivam was born on 03.05.2005 and he is with respondent No.1. The petitioner and respondent No.1 is residing separately since 2009. The respondent No.1 filed petition under Section 125 Cr.P.C in the year 2012 and the learned Family Court, Rohtak vide judgment dated 13.07.2015 granted total maintenance of Rs.5,000/- to the respondents (Rs.3,000/- to respondent No.1-wife and Rs.2,000/- to respondent No.2-son). The respondent No.1 filed an application for enhancement of maintenance under Section 127 Cr.P.C. on 02.04.2018.

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3. Learned counsel for the petitioner *inter alia* contends that the learned lower Court only relied upon the change in the rate of inflation and did not consider any material substantial change in the income of the petitioner. It has also been argued that the petitioner is the only son who is having liability of his old aged parents.

4. Having heard the learned counsel for the petitioner and after perusing the record with his able assistance, this Court finds no force in the arguments advanced by learned counsel for the petitioner. The present petition is decided *in limine* in order to save litigation cost of the respondent and also to save the judicial time of the Court.

5. Another objective the legislature has sought to achieve by this provision is to provide interim 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.

6. The rival claimants must scrupulously bring on record their actual respective earning capacities in order for the Court to arrive at quantum of interim maintenance which is just and fair in terms of principle of equistatus. The quantum of interim maintenance must be justifiable and realistic to provide succour to the dependent spouse and also to avoid occurrence of the two extremes of the interim maintenance being either paltry or extravagant, ensuring that neither of the two is reduced to a life of penury. The adequacy of the interim maintenance allowance has to be determined by the yardstick of the dependent spouse and children being able to lead a life of reasonable comfort.

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7. While dealing with the issue of maintenance *in extenso*, a two Judge bench of the Hon'ble Supreme Court in ***Rajnesh v. Neha and another (2021) 2 SCC 324***, 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

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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.*

(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 r.w. Order XXI."*

8. A perusal of the impugned order passed by the learned Family Court makes it evident that the Court below has duly considered the material placed before it at the time of deciding the application for interim

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maintenance. There has been change in the occupation of the respondent from a casual labourer to an Advocate which comes under the phrase ‘change in circumstances’ under Section 127 Cr.P.C. Earlier the maintenance had been granted when the petitioner was working as a labourer, however, now the petitioner has been enrolled as an Advocate with Punjab & Haryana Bar Council, Chandigarh since 2015 and at present, he is a member of District Bar Association, Bhiwani and is in regular legal practice at Bhiwani. It can be safely presumed that the income of the petitioner had considerably enhanced as compared to his income in the year 2015. Learned counsel for the petitioner has not been able to indicate any perversity in the impugned order which warrants interference by this Court. Accordingly, the present petition is dismissed being bereft of any merit.

9. Nothing observed hereinabove shall be construed to be an expression of opinion by this Court lest it may prejudice the trial. The learned Court below is directed to proceed with the trial on its own merits, strictly in accordance with law.

10. Pending miscellaneous application(s), if any, also stand(s) disposed of.

(KIRTI SINGH)
JUDGE

07.01.2025
Ramandeep Singh

Whether speaking / reasoned
Whether Reportable

Yes/No
Yes/No