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

CRR(F)-884-2022

Reserved on: 30.08.2024

Pronounced on: 31.08.2024

Vikas Dagar

....Petitioner

Versus

Yogita and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

**Present:** Ms. Karamjeet Sharma, Advocate  
for the petitioner.

Mr. Harender Singh, Advocate  
for the respondents

**HARPREET SINGH BRAR, J.**

1. The present revision petition has been preferred by the petitioner-husband against the impugned order dated 08.08.2022 passed by the learned Principal Judge, Family Court, Jhajjar, whereby maintenance of Rs. 10,000/- per month has been awarded to his wife and Rs.4,000/- per month has been awarded to his minor daughter.

2. The facts, tersely put, are that the marriage between the petitioner and respondent no.1 was solemnised on 11.03.2007 in accordance with Hindu rites and rituals. Out of this wedlock, two children were born. However, matrimonial dispute ensued between the couple and respondents filed a petition under Section 125 Cr.P.C. seeking maintenance of Rs. 35,000/- per month. The petitioner filed a reply and contested the claim made by the respondents. The learned Family Court vide order dated 08.08.2022 granted maintenance allowance of Rs. 14,000/- per month in favour of the respondents. Aggrieved by the same, the petitioner has approached this Court by filing the present petition.



3. Learned counsel for the petitioner submitted that the couple has two children and elder daughter is living with the wife whereas the younger son is residing with the petitioner/husband. It was further contended that although the petitioner/husband was earning Rs.52,000/- per month in 2019, his discharge from service was initiated on medical grounds/mental illness in December 2019. Consequently, his only source of income stopped and as such he was unable to pay the due maintenance amount after December 2019. In order to show bonafide intent of the petitioner/husband, she brought into notice of this Court the affidavit filed by the petitioner showing that a surplus maintenance amount of Rs.61,630/- stood realized in favour of the respondents till December 2019. It was contended that since his salary had been stopped after December 2019, the petitioner has been unable to pay the maintenance amount while also taking care of the son who is in his custody. She submitted that the learned Family Court erred by ignoring the aforesaid fact while passing the impugned order and the deserves to be set aside.

4. Learned counsel for the respondents submitted that the petitioner/husband has other sources of income and is also morally and legally bound to maintain his wife as well as his minor daughter. He also argued that no interference is warranted by this Court in the impugned order as it has been passed after due appreciation of evidence.

5. I have heard the learned counsel for the parties and gone through the record with their able assistance. It transpires that the respondents have no independent source of income and are dependent upon the petitioner for their sustenance. Although, the petitioner has contended that since December 2019, his only source of income, in the form of salary from Central Government, has also stopped on account of his disability arising out of a mental ailment,



however, during the cross-examination of Dr. Pardeep Kumar before the learned Family Court (who was called by the petitioner/husband), it has come out that the ailment suffered by the petitioner was of temporary nature and his disability certificate (Ex.R31) was valid upto 30.03.2023 only. Further, it cannot be ignored that the petitioner himself sought discharge from his job vide letter dated 27.04.2020 on medical grounds but never consulted any empanelled hospitals of the government prior to 01.03.2022. Moreover, the petitioner had appeared before the learned Court below on 15.09.2021 for his examination-in-chief and then on 09.02.2022, to face his cross-examination, suggesting that he was normal till then. During his cross-examination, the petitioner came across as highly alert while answering the questions put to him. The petitioner was ordered to pay interim maintenance to the tune of Rs.13,000/- per month to the respondents from the date of petition, i.e., 18.12.2017 but he defaulted in paying the said interim maintenance and only paid the same on the directions of this Court or to avoid coercive actions against him by the learned Family Court be that as it may. Furthermore, the petitioner has failed to bring on record any document showing that he has been relieved from his duties as Manager at Ordnance Cable Factory, because the letter dated 13.10.2021(Ex.R61) only shows that his salary has been stopped due to his absence from his duty since December 2019. In the light of the aforesaid discussion, it is not beyond the realm of possibility that the petitioner intentionally absented himself from duty without ever resigning from his job only to avoid the payment of interim maintenance to the respondents.

6. The object and purpose behind granting maintenance is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of failure of marriage. At the same time, a just and careful balance must be



struck to ensure that this provision does not degenerate into a weapon to punish the other spouse. The Courts are required to conduct the maintenance proceedings while being alive to the legislative intent behind the provision under Section 125 Cr.P.C in its true spirit, which is to provide speedy assistance and social justice to women, children and infirm parents. The provisions of Section 125 Cr.P.C. were enacted as a measure to further social justice and protect dependent women, children and parents, which also fall within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India.

7. Pertinently, a three-Judge Bench of the Hon'ble Supreme Court in ***Vimala (K.) v. Veeraswamy (K.) (1991) 2 SCC 375***, speaking through Justice Fatima Beevi, opined that as follows:

*“3. Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing, and shelter to the deserted wife.”*

A two-Judge Bench of the Hon'ble Supreme Court in ***Kirtikant D. Vadodaria v. State of Gujarat (1996) 4 SCC 479***, speaking through Justice Faizan Uddin, opined as follows:

*“15. ... While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the*



*benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation.”*

8. There is a general tendency on the part of the wife to amplify her needs and the husband to conceal his actual income, making it difficult to determine the earning capacity of the rival claimants with exactitude. The rival claimants must scrupulously bring on record their actual respective earning capacities in order for the Court to arrive at quantum of maintenance which is just and fair in terms of principle of equistatus. The quantum of maintenance 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. The adequacy of the maintenance allowance has to be determined by the yardstick of the dependent spouse being able to lead a life of reasonable comfort.

9. 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:

***"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 dependent 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 and others (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."*

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## **VI Final Directions**

*130. In view of the foregoing discussion as contained in Part B -I 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**

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.

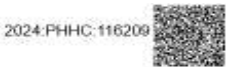
**(d) Date from which maintenance is to be awarded**

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."

10. A perusal of the impugned order passed by the learned Family



placed before it for determining the quantum of maintenance. As per the salary certificate of February 2019 and March 2019 (Ex.P22), net pay of the petitioner was more than Rs.50,000/- per month. Besides this, the petitioner also filed a petition before the learned Family Court seeking custody of his minor daughter (respondent no.2) and it is quite bemusing that he would seek custody of his minor daughter when the minor son is already in his custody without having sufficient means to sustain them. The petitioner also appears to be owner of agricultural land at village Jaitpur but he tried to conceal the same before the learned Family Court and remained evasive during his cross-examination qua this fact. Therefore, this Court is of the considered opinion that the learned Family Court correctly assessed the net income of the petitioner to be Rs.6,00,000/- per annum. Further, a careful and just balance has been drawn, keeping in view the spiralling inflation rates and high cost of living corresponding to the reasonable needs of the respondents. Learned counsel for the petitioner has not been able to indicate any perversity in the impugned order which warrants interference by this Court.

11. Accordingly, the present petition is dismissed being bereft of any merit.

(HARPREET SINGH BRAR)  
JUDGE

31.08.2024  
Neha

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