



2024:PHHC:139535



CRR(F)-1355-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

109



V/s



...Respondent


**CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**

Present: Mr. Rahul Garg, Advocate for the petitioner.

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**SUMEET GOEL, J. (Oral)**

1. Present revision petition has been preferred against the order dated 17.08.2024 passed by the learned Principal Judge, Family Court, Camp Court, Nabha (hereinafter to be referred as the 'concerned Family Court') praying for setting-aside of the said order. Vide the impugned order; the respondent (herein) has been awarded interim maintenance at the rate of Rs.7,000/- per month to be paid by the petitioner (herein) from the date of filing of petition alongwith litigation expenses to the tune of Rs.10,000/-

2. Learned counsel for the petitioner has iterated that the petitioner has submitted an affidavit before the learned Family Court, clearly indicating that he is employed in a private job with a meagre monthly income of Rs.22,000/-, and that six of his family members are dependent on the petitioner. Despite these facts being on record, the learned Family Court, without properly considering the financial circumstances, erroneously awarded interim maintenance to the respondent. In contrast, the wife of the petitioner namely  (natural guardian of the respondent), is a government teacher with a monthly income of Rs.35,400/-, and the



respondent is in care and custody of her mother (petitioner's wife), who has sufficient means to maintain the respondent and look after all her needs. It has been further iterated that the learned Family Court, while passing the impugned order, failed to appreciate the facts and evidence in the correct perspective, rendering the order unsustainable. Furthermore, the petitioner has also filed a petition under Section 9 of the Hindu Marriage Act, which is still pending. Learned counsel asserts that the petitioner never refused to maintain his wife or the minor daughter (respondent herein). Moreover, the petitioner has also filed a petition under Section 8 of the Guardian and Wards Act, 1890, for custody of the minor daughter (respondent herein), which is currently pending before the Principal Family Court, Nabha, District Patiala. Thus, it has been prayed that the impugned order is patently illegal, perverse and suffers from material illegalities and infirmities and the same is liable to be set-aside.

3. *Per contra*, learned counsel for the respondent has iterated that the learned Family Court has rightly allowed the application seeking interim maintenance as the respondent, who is the minor daughter of the petitioner, is being looked after by her maternal grand-parents. It has been further iterated that the respondent is a school going child and taking into consideration the ever-increasing cost of living, including essential commodities, education, medical expenses and other household needs, the quantum of interim maintenance awarded by the Family Court is just and appropriate in the facts and circumstances of the case. Furthermore, the Family Court has determined the quantum of maintenance based on the calculation of the income of the petitioner as also taken due consideration of the relevant facts and circumstances of the case. It has been further



contended that as the respondent being minor daughter of the petitioner-herein, it is the moral as well as the legal duty of the petitioner-herein to maintain his minor daughter (respondent-herein), and he cannot be absolved of his obligation merely on the ground that the respondent's mother has sufficient income to maintain the respondent. Thus, it has been prayed that the present petition be dismissed.

4. I have heard learned counsel for the parties and have perused the available record.

5. It would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court titled as ***Rajnish vs. Neha & Anr.: 2021(2) SCC 324***; relevant whereof reads as under:-

***“II Payment of interim Maintenance***

- 1. The proviso to Section 24 of the HMA (inserted vide Act 49 of 2001 w.e.f. 24.09.2001), and the third proviso to Section 125 Cr.P.C., 1973 (inserted vide Act 50 of 2001 w.e.f. 24.09.2001) provide that the proceedings for interim maintenance, shall as far as possible, be disposed of within 60 days' from the date of service of notice on the contesting spouse. Despite the statutory provisions granting a time-bound period for disposal of proceedings for interim maintenance, we find that application remain pending for several years in most of the cases. The delays are caused by various factors, such as tremendous docket pressure on the Family Courts, repetitive adjournments sought by parties, enormous time taken for completion of pleadings at the interim stage itself, etc. Pendency of applications for maintenance at the interim stage for several years defeats the very object of the legislation.*
- 2. At present, the issue of interim maintenance is decided on the basis of pleadings, where some amount of guess-work or rough estimation takes place, so as to make a prima facie assessment of the amount to be awarded. It is often seen that both parties submit scanty material, do not disclose the correct details, and suppress vital information, which makes it difficult for the Family Courts to make an objective assessment for grant of interim maintenance. While there is a tendency on the part of the wife to exaggerate her needs, there is a corresponding tendency by the husband to conceal his actual income.*

*74. It has therefore, become necessary to lay down a procedure to streamline, the proceedings, since a dependant wife, who has no other*



*source of income, has to take recourse to borrowings from her parents/relatives during the interregnum to sustain herself and the minor children, till she begins receiving interim maintenance.*

xxx                      xxx                      xxx                      xxx                      xxx  
xxx                      xxx                      xxx                      xxx                      xxx

*(j) The concerned Family Court /District Court/Magistrate's Court must make an endeavour to decide the I.A. for Interim Maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.*

xxx                      xxx                      xxx                      xxx                      xxx  
xxx                      xxx                      xxx                      xxx                      xxx

*132. The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the concerned Family Court/District Court/Magistrate's Court, as the case may be, throughout the country;*

xxx                      xxx                      xxx                      xxx                      xxx  
xxx                      xxx                      xxx                      xxx                      xxx”

6. Vide the impugned order passed by the Family Court, the aspect of interim maintenance has been decided. It goes without saying that a decision upon the aspect (especially quantum) of interim maintenance, being result of some element of estimation, has to be construed accordingly as the entitlement of the applicant (making a plea for grant of interim maintenance) cannot be based upon exact arithmetical calculations at such stage. The order granting interim maintenance is, indubitably, subject to final adjudication and it is a provisional step subject to final determination to be made on the conclusion of proceedings. In other words, the interim maintenance is only tentative & is subject to fixation of final maintenance.

7. Indubitably, the relationship between the parties is not in dispute. The facts of the instant case reflect that vide the impugned order; the respondent, who is the minor daughter of the petitioner, has been granted interim maintenance at the rate of Rs.7,000/- per month from the date of



filing of the application. While going through the impugned order, it transpires that both the parties (i.e. the petitioner-father and his wife, who is the natural guardian of the respondent-minor daughter (herein)) have placed on record the affidavits with regard to their respective incomes, assets and liabilities in terms of the judgment of the Hon'ble Supreme Court titled as ***Rajnesh vs. Neha & Anr.: 2021(2) SCC 324*** . As per the said affidavit, the petitioner-father is employed in a private job earning Rs.22,000/- per month. The Family Court observed that since the respondent (herein) is the minor daughter of the petitioner (herein) and has no independent source of income to support herself, it is the moral and legal duty of the respondent to support her. Being the father, the petitioner (herein) is obligated to maintain her to ensure a decent standard of living.

7.1 The contention raised on behalf of the petitioner-herein that the petitioner is not liable to maintain the respondent owing to her being in the custody of her mother (wife of petitioner-herein) and the mother possessing sufficient means to maintain and look after the respondent, is not well-founded in law. Section 125 Cr.P.C. is a tool for social justice enacted to ensure that women and children are protected from a life of potential vagrancy and destitution. If the husband/father has sufficient means, he is obligated to maintain his wife and children, and cannot shirk away from his moral and familial responsibilities. In households wherein the women are working and are earning sufficiently to maintain themselves, it does not automatically mean that the husband/father is absolved of his responsibility to provide sustenance for his children. A father has an equal duty to provide for his children and there cannot be a situation wherein it is only the mother who has to bear the burden of expenses for raising and educating the



children. A profitable reference in this regard can be made to the following observations made by the Hon'ble Supreme Court in the case of **Rajnish** (supra):-

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**Where wife is earning some income**

90. The Courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The Courts have provided guidance on this issue in the following judgments.

91. In **Shailja & Anr. v. Khobbanna, (2018) 12 SCC 199**. See also Decision of the Karnataka High Court in **P. Suresh v. S. Deepa & Ors., 2016 CriLJ 4794** this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The Court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. **Chaturbhuj v. Sita Bai, (2008) 2 SCC 316** Sustenance does not mean, and cannot be allowed to mean mere survival. **Vipul Lakhanpal v. Smt. Pooja Sharma, 2015 SCC Online HP 1252**.

92. In **Sunita Kachwaha & Ors. v. Anil Kachwaha (2014) 16 SCC 715** the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

93. The Bombay High Court in **Sanjay Damodar Kale v. Kalyani Sanjay Kale 2020 SCC Online Bom 694** while relying upon the judgment in **Sunita Kachwaha (supra)**, held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.

94. An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in **Chander Prakash Bodhraj v. Shila Rani Chander Prakash, AIR 1968 Delhi 174**. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the Court.

95. This Court in **Shamima Farooqui v. Shahid Khan (2015) 5 SCC 705** cited the judgment in **Chander Prakash (supra)** with approval, and held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife.

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Thus, even the mother is working, it does not mean the father will be absolved from taking responsibility of his child. The father is legally bound to maintain his child according to his status and lifestyle.

7.2 The averments made on behalf of the petitioner regarding the respondent being in unlawful custody of his wife (mother of the respondent);



the petitioner having filed a petition under Section 8 of Guardians and Wards Act, 1890; and the respondent being not properly taken care of by her mother, are not matters for this Court to consider at this stage. The present petition having been filed to impugn the order vide which interim maintenance was granted, it is not appropriate for this Court to delve deep into these contentions at this stage or determine their impact (if any) on the maintenance proceedings, pending before the Court below.

7.3 Therefore, keeping in view the facts and circumstances of the case, this Court is of the considered opinion that the Family Court had taken into account not only the financial capability of the petitioner but also the comprehensive efforts required to raise a child, which should be fairly shared between both the parents. At this juncture, the contentions raised by learned counsel for the petitioner in the present petition with regard to factual aspect, are matter of trial and no ratiocination on the same can be effectively made at this stage. The same can only be ascertained after the parties adduce evidence. It is also apparent from the record that the order under challenge is only interim in nature and not a final decision on the maintenance petition. The amount of maintenance awarded is always subject to the adjustment which will depend on the final outcome of the maintenance petition filed by the respondent.

7.4 Considering the facts and circumstances of the case, the amount of Rs.7,000/- per month, which has been directed to be paid by the petitioner (herein) to the respondent – minor daughter, vide the impugned order cannot be said to be on the higher side and is rather just and appropriate in the facts/circumstances of the case.



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8. In view of above, the interim maintenance granted by the Family Court does not call for any interference. Accordingly, the instant petition is hereby dismissed.

9. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case and the Family Court shall proceed further, in accordance with law, without being influenced with them.

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

**(SUMEET GOEL)**  
**JUDGE**

October 24, 2024

*Ajay*

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

