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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR(F)-276-2025 (O&M)
Date of decision: 27.02.2025

BALWANT KUMAR

...Petitioner(s)

VERSUS

MAMTA AND ANOTHER

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Dr. Payel Mehta, Advocate for the petitioner.

JASGURPREET SINGH PURI, J. (Oral)

CRM-8166-2025

Prayer in this application is for condonation of delay of 67 days in filing the present revision petition.

For the reasons mentioned in the application, the same is allowed and the delay of 67 days in filing the present revision petition, is hereby condoned.

CRR(F)-276-2025

1. The present revision petition has been filed for setting aside the impugned judgment dated 04.09.2024 passed by the learned Additional Principal Judge, Family Court, Ludhiana, vide which maintenance has been granted to the respondents.

2. The petitioner is the husband, whereas respondent No.1 is the wife and respondent No.2 is the minor son of the age of 9 years as so stated by the learned counsel for the petitioner.



3. Learned counsel for petitioner submitted that it is a case where the petitioner was a labour contractor and was earning an amount of Rs.5,000/- Rs.6,000/- per month only, although it was so alleged by respondent No.1-wife that he was earning about Rs.50,000/- per month being a labour contractor but there was nothing on the record to show the same. She further submitted that the petitioner-husband and respondent No.1-wife have been living separately from the year 2015 and on the basis of the evasive and bald averments made by the respondents in the petition filed under Section 125 Cr.P.C., the learned Additional Principal Judge, Family Court, Ludhiana vide aforesaid impugned judgment has allowed the petition under Section 125 Cr.P.C., vide which maintenance to the tune of Rs.6,000/- per month has been fixed for respondent No.1-wife and Rs.4,000/- per month has been fixed for respondent No.2-minor son of the age of 9 years. She further submitted that the petitioner-husband is unable to pay the aforesaid amount of maintenance of Rs.10,000/- per month (Rs.6,000/-+Rs.4,000/-) because his own income is about Rs.5,000/-Rs.6,000/- per month and therefore, the impugned judgment may be set aside or in the alternative, the aforesaid maintenance amount may be reduced to half.

4. Learned counsel for the petitioner also submitted that although the petitioner has not adduced evidence or filed any affidavit showing his income before the learned Additional Principal Judge, Family Court, Ludhiana but now alongwith the present petition, an affidavit has been attached as Annexure P-2 to show that he has an income of Rs.5,000/-Rs.6,000/- per month.

5. I have heard the learned counsel for the petitioner.

6. It is a case where respondent No.1-wife and her minor son of the age of 9 years had filed a petition under Section 125 Cr.P.C. before the learned



Additional Principal Judge, Family Court, Ludhiana for grant of maintenance. The petitioner, who is the husband chose not to appear before the learned Additional Principal Judge, Family Court, Ludhiana and was proceeded *ex parte*. When the evidence of respondent No.1-wife started, then as per the impugned judgment, the petitioner appeared before the learned Additional Principal Judge, Family Court, Ludhiana and he was allowed to join the proceedings, subject to the condition that he will pay the entire amount due till date, within a period of two months and shall also file his reply and income affidavit, within a period of two months. Thereafter, the petitioner-husband did not file any reply or income affidavit.

7. When the wife, who is respondent No.1 led *ex parte* evidence, she had stated that there is a minor son of the age of 9 years, who is in her care and custody and rather a girl child was also born thereafter, who unfortunately died because of lack of care by the petitioner-husband. It was the case of respondent No.1-wife that the income of the petitioner-husband was Rs.50,000/- per month because he was working as a labour contractor. However, neither such document was placed on record nor any affidavit was filed by the petitioner-husband declaring his income despite the fact that he was allowed to join the proceedings subject to the aforesaid condition. So far as the income of respondent No.1-wife is concerned, she does not have any source of income. It has also come in the impugned judgment by way of evidence of respondent No.1-wife that the petitioner-husband is a Graduate and is running a business of labour contractor. The learned Additional Principal Judge, Family Court, Ludhiana came to the conclusion that although the exact income of the petitioner-husband was not on record because he did not file his income



affidavit and was proceeded against *ex parte* but he being an able-bodied man and a man of means and even if he was working as a labour contractor, then he should be earning at least Rs.15,000/-Rs.20,000/- per month. In this way, the learned Additional Principal Judge, Family Court, Ludhiana has granted maintenance to the tune of Rs.6,000/- per month for respondent No.1-wife and Rs.4,000/- per month for respondent No.2-minor son of the age of 9 years.

8. After hearing the learned counsel for the petitioner and perusing the aforesaid impugned judgment, this Court is of the considered view that it is a settled law that if a husband is an able-bodied man and even if he is not having any source of income, still he is bound to maintain his wife and minor children. Hon'ble Supreme Court in **Anju Garg versus Deepak Kumar Garg, (2022) SCC Online SC 1314** observed 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. So far as the argument raised by the learned counsel for the petitioner that the petitioner has attached his income affidavit alongwith the present petition as Annexure P-2 is concerned, this Court is of the view that the aforesaid affidavit (Annexure P-2) is of no avail because the same has been filed in the present case which is a revision petition and the scope of revision petition is very limited and there is no justification as to why the petitioner did not file his income affidavit before the learned Additional Principal Judge, Family Court, Ludhiana. Even otherwise also, even if assumingly the income of the petitioner is considered to be Rs.5,000/-Rs.6,000/- per month as per his own affidavit, then too he being an able-bodied man, who is a Graduate is bound to maintain his wife and his minor son of the age of 9 years in view of the aforesaid judgment of Hon'ble Supreme Court in Anju Garg's case (Supra).

10. In the present case, the petitioner-husband instead of filing his income affidavit and contesting the petition under Section 125 Cr.P.C. has chosen not to appear, although once he appeared but thereafter, neither he has filed any reply nor any income affidavit. Therefore, even if the income of the petitioner-husband was not on record because of his own default and it has come on the record that respondent No.1-wife was not having any source of income and rather was having the care and custody of the minor son of the age of 9 years, the fixation of Rs.6,000/- per month as maintenance for respondent No.1-wife and Rs.4,000/- per month for respondent No.2-minor son of the age



of 9 years cannot by any stretch of imagination held to be excessive or erroneous in nature. It is not only a statutory duty but also a moral duty of the husband to maintain his wife. The quantum of maintenance as fixed aforesaid by the learned Additional Principal Judge, Family Court, Ludhiana is not on the higher side at all. This Court does not find any merit in the present revision petition because no illegality or perversity can be found in the impugned judgment dated 04.09.2024 passed by the learned Additional Principal Judge, Family Court, Ludhiana.

11. Consequently, the present revision petition is hereby dismissed.

(JASGURPREET SINGH PURI)
JUDGE

27.02.2025
Chetan Thakur

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