

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. Revision No. 660 of 2023**

**Date of Decision: 20.12.2023.**

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Dharmender Kumar Kaushal ...Petitioner

Versus

Seema Devi ...Respondent

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*Coram*

*Hon'ble Mr. Justice Rakesh Kainthla, Judge.*

*Whether approved for reporting?<sup>1</sup> Yes.*

For the Petitioner : Ms. Anu Tuli, Advocate.

For the Respondent : Mr. Bhim Raj Sharma, Advocate.

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**Rakesh Kainthla, Judge (Oral)**

The petitioner has assailed the order dated 20.8.2022, passed by learned Principal Judge Family Court, Shimla vide which the petition under Section 125(1) of the Cr.P.C. for seeking interim maintenance was allowed and the maintenance of ₹5,000/- per month was granted to the respondent (Petitioner before the learned Principal Judge) from the date of application till final disposal of the main petition.

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<sup>1</sup> Whether reporters of Local Papers may be allowed to see the judgment? Yes.

(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present petition are that the petitioner filed a petition under Section 125 of Cr.P.C. for seeking maintenance @ ₹20,000/- per month. It was asserted that the marriage between the petitioner and respondent was solemnized as per Hindu rites and customs on 5-6<sup>th</sup> March 2018 at Village Kharonwala, Post Office Bhararighat, Sub-Tehsil Darlaghat, Tehsil Arki, District Solan, H.P. The parties resided together after the marriage. The respondent and his family members started harassing the petitioner after about two months of the marriage without any reason. Daily necessities were denied to the petitioner. The respondent and his family members asked the petitioner to persuade her parents to give her more dowry. The stridhan gifted to the petitioner was also retained by the respondent and his family members. The behaviour of the respondent deteriorated with time. He physically and mentally tortured the petitioner and abused her in filthy language. The petitioner made a complaint to the Women's Police Station, New Shimla on

3.4.2021. The petitioner has no source of income, whereas the respondent is working as a Chartered Accountant at Vikasnagar at a monthly salary of ₹40,000/-. He has no liability and no other person to maintain except the petitioner. Hence, the petition seeking the maintenance.

3. The petition was opposed by filing a reply taking preliminary objections regarding lack of maintainability, the petitioner not having come to the Court with clean hands and the petitioner being barred by the principle of estoppel and acquiescence. The contents of the petition were denied on merits; however, the relationship between the parties was not disputed. It was asserted that the respondent never maltreated or harassed the petitioner. The petitioner had an extramarital affair and she used to talk regularly to same person. She also used to exchange video calls. The petitioner suffered from psychological problems which were not disclosed to the respondent at the time of the marriage. She would remain alone in the room for hours and come out of the room to have food or use the washroom. The sister-in-law of the respondent used to take care of the household chores and the petitioner never helped her. The respondent took care of the medical expenses of

the petitioner. The police tried to settle the matter; however, the petitioner was bent upon harassing the respondent and his family members. The petitioner left the matrimonial home on her own will and she is not entitled to any maintenance. She is an able-bodied person having the qualification of a B.Ed. and she can easily maintain herself. It was specifically denied that the *stridhan* of the petitioner was taken by the respondent or his family members. Therefore, it was prayed that the present petition be dismissed.

4. A rejoinder denying the contents of the reply and affirming those of the petition was filed.

5. An application seeking interim maintenance @ ₹15,000/- per month was filed by the petitioner which was opposed by the respondent.

6. Learned Principal Judge, Family Court, Shimla held that the relationship between the parties was not disputed. It was also not disputed that the petitioner was unemployed and was dependent upon her parents for her daily needs. There was no proof that the respondent was earning ₹40,000/- per month. The plea of the respondent that the petitioner had left her

matrimonial home without any reasonable cause was to be seen at the time of the conclusion of the trial and not at the stage of interim maintenance. The respondent being the petitioner's husband is bound to maintain her; hence, maintenance @₹5,000/- per month was awarded to the petitioner.

7. Aggrieved from the order passed by the learned Principal Judge, Family Court, Shimla, the present petition has been filed. It has been asserted that the learned Principal Judge, Family Court had taken a very harsh view, which has caused gross injustice to the respondent. The petitioner had deserted the respondent without any reasonable cause and the respondent had never neglected or refused to maintain the petitioner. The income of the respondent is ₹6,000/- per month and payment of maintenance of ₹5,000/- per month would be unjust. Therefore, it was prayed that the present petition be allowed and the order passed by the learned Principal Judge, Family Court, Shimla be set aside.

8. I have heard Ms. Anu Tuli, learned Counsel for the petitioner and Mr. Bhim Raj Sharma, learned counsel for the respondent.

9. Ms Anu Tuli, learned Counsel for the petitioner submitted that the respondent has filed an affidavit in compliance with the direction passed by the Hon'ble Supreme Court in *Rajnish v. Neha*, (2021) 2 SCC 324, in which it was specifically mentioned that the income of the respondent is ₹6,000/- per month. The petitioner is an able-bodied person. She is highly qualified and has passed B.Ed. examination. She is capable of earning and is not entitled to any maintenance from her husband. The respondent would be left with ₹1,000/- per month after the payment of ₹5,000/- per month to the petitioner. The Court has to balance the equities of both parties and cannot be unjust to either of the parties. Keeping in view these parameters, the maintenance of ₹5,000/- per month, awarded by the learned Principal Judge, Family Court, Shimla is harsh. Hence, she prayed that the petition be allowed and the order passed by learned Principal Judge, Family Court, Shimla be set aside.

10. Mr. Bhim Raj Sharma, learned counsel for the respondent supported the order passed by learned Principal Judge, Family Court, Shimla and submitted that the respondent is an able-bodied person. He is bound to maintain his wife and

cannot escape from the liability on the ground that he is incapable of earning. The learned Principal Judge, Family Court, Shimla rightly held that the question of the petitioner leaving her matrimonial home voluntarily or not is not to be adjudicated at this stage. The petitioner is to be saved from vagrancy and the amount of ₹5,000/- is just. Therefore, he prayed that the present petition be dismissed.

11. I have given considerable thought to the submissions at the bar and have gone through the records carefully.

12. The respondent has filed an affidavit of income, in which he stated that his income is ₹6,000/- per month by working as a part-time Accountant. However, he has not furnished the income certificate issued by his employer stating his designation and gross monthly income as required under para-3 of Section F of the affidavit. He has filed the account statement but it does not show the regular remittance of ₹6,000/- to corroborate his version that his income is ₹6,000/- per month. It is undisputed that the respondent is an able-bodied person and therefore, he is expected to earn the minimum wages fixed by the State Government. It was laid

down by the Hon'ble Supreme Court in *Shamima Farooqui v. Shahid Khan*, (2015) 5 SCC 705 : (2015) 2 SCC (Cri) 785 : (2015) 3 SCC (Civ) 274: 2015 SCC OnLine SC 288 that an able-bodied person cannot escape from paying maintenance to the wife on the ground that he has no income to pay maintenance to her. It was observed:

14..... Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able-bodied and is in a position to support himself, he is under the legal obligation to support his wife, for the wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right.

15. While determining the quantum of maintenance, this Court in *Jasbir Kaur Sehgal v. District Judge, Dehradun* [(1997) 7 SCC 7] has held as follows : (SCC p. 12, para 8)

“8. ... The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such that she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate.”

16. Grant of maintenance to wife has been perceived as a measure of social justice by this Court.

In *Chaturbhuji v. Sita Bai* [(2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356], it has been ruled that : (SCC p. 320, para 6)

“6. ... Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in *Capt. Ramesh Chander Kaushal v. Veena Kaushal* [(1978) 4 SCC 70: 1978 SCC (Cri) 508] falls within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It 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. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in *Savitaben Somabhai Bhatiya v. State of Gujarat* [(2005) 3 SCC 636: 2005 SCC (Cri) 787].”

17. This being the position in law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.

18. In this context, we may profitably quote a passage from the judgment rendered by the High Court of Delhi in *Chander Parkash Bodh Raj v. Shila Rani Chander Prakash* [1968 SCC OnLine Del 52: AIR 1968 Del 174] wherein it has been opined thus : (SCC OnLine Del para 7)

7. ... an able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such an able-bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the

husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him.

19. From the aforesaid enunciation of law it is limpud that the obligation of the husband is on a higher pedestal when the question of maintenance of wife and children arises. When the woman leaves the matrimonial home, the situation is quite different. She is deprived of many a comfort. Sometimes her faith in life reduces. Sometimes, she feels she has lost the tenderest friend. There may be a feeling that her fearless courage has brought her misfortune. At this stage, the only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot be allowed to resign to destiny. Therefore, the lawful imposition for grant of maintenance allowance.

13. Therefore, the plea of the respondent that he is earning less than the minimum wage cannot be accepted and the income of the respondent has to be considered based on minimum wages.

14. The State Government had fixed the minimum wage of ₹300/- per day or ₹9,000/- per month, therefore, the income of the respondent has to be taken as ₹9,000/- per month.

15. It was submitted on behalf of the respondent that the petitioner is highly educated. She is B.Ed. and is capable of earning for herself. This submission will not help the respondent. It was laid down by the Punjab and Haryana High Court in *Lipi Mohapatra vs. Vinay Kumar 2018 (1) HLR 891* that

maintenance cannot be denied to a wife on the ground that she is capable of earning. It was observed:

“On asking of the court, it has been informed that the applicant is educated having done Post Graduation in the subject of English. But the circumstances that she is capable of earning and is doing some constructive work for earning will not disentitle her for maintenance pendente lite as the said factor will not ipso facto disentitle her for the maintenance pendente lite as she has to be maintained commensurate with the status and earnings of the husband.”

16. Similarly it was held by the Hon’ble Supreme Court in *Manish Jain vs. Akanksha Jain 2017 (15) SCC 801* that it is no answer to the claim of the wife that she is educated and capable of earning for herself. It was observed:

“5. An order for maintenance pendente lite or for costs of the proceedings is conditional on the circumstance that the wife or husband who makes a claim for the same has no independent income sufficient for her or his support or to meet the necessary expenses of the proceeding. *It is no answer to a claim of maintenance that the wife is educated and could support herself.* Likewise, the financial position of the wife's parents is also immaterial. The Court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance and whether the applicant has any independent income sufficient for her or his support. Maintenance is always dependent upon the factual situation; the Court should, therefore, mould the claim for maintenance determining the quantum based on various factors brought before the Court.”

17. Similarly it was held in *Shailja v. Khobbanna*, (2018) 12 SCC 199 : (2018) 5 SCC (Civ) 308: 2017 SCC OnLine SC 269 that there is a distinction between actual earning and capable of earning. It was observed:

5. That apart, we find that the High Court has proceeded on the basis that Appellant 1 was capable of earning and that is one of the reasons for reducing the maintenance granted to her by the Family Court. Whether Appellant 1 is capable of earning or whether she is actually earning are two different requirements. Merely because Appellant 1 is capable of earning is not, in our opinion, sufficient reason to reduce the maintenance awarded by the Family Court.

18. Therefore, the maintenance cannot be denied to the wife on the grounds that she is highly qualified and capable of earning for herself. In order to deny the maintenance, it has to be shown that the wife is actually earning something, which is sufficient for her maintenance and it is not sufficient to establish that she is capable of earning for herself.

19. It was submitted that the petitioner is taking tuition and she is capable of earning for herself. This submission is also not acceptable. It was laid down by the Hon'ble Supreme Court *Rajathi v. C. Ganesan*, (1999) 6 SCC 326 that words unable to maintain herself would include the means available to the wife

when she was living with her husband and does not include the efforts made by her after desertion to survive. It was observed:

“The words "unable to maintain herself" would mean that means available to the deserted wife while she was living with her husband and would not take within themselves the efforts made by the wife after the desertion to survive somehow. Section 125 is enacted on the premise that it is the obligation of the husband to maintain his wife, children and parents. It will, therefore, be for him to show that he has no sufficient means to discharge his obligation and that he did not neglect or refuse to maintain them or any one of them.”

20. Thus, the efforts made by the wife to sustain herself cannot be used to deny maintenance to her.

21. Once it is found that the minimum wage is ₹9,000/-, the maintenance of ₹5,000/- is excessive. Payment of maintenance of ₹5,000/- would leave an amount of ₹4,000/- with the respondent to maintain himself. There is a force in the submission of learned counsel for the respondent that the Court has to balance the equities of both parties and cannot favour one party over another. When the equities are balanced, an amount of ₹4,500/- would be sufficient as maintenance for the wife which would leave an equal amount with the respondent to maintain himself. It is undisputed that the respondent does not have any liability except maintaining the petitioner, hence both

parties would be left with an equal amount after the payment of ₹4,500/-.

22. The learned Principal Judge, Family Court had rightly held that the Court is not to decide whether the wife has left the matrimonial home with a reasonable or without a reasonable cause at this stage and this has to be seen at the time of the trial. It was laid down by this Court in *Subhash Chand v. Krishani Devi*, 2021 SCC OnLine HP 7309 that granting interim maintenance is like providing first aid to the wife. It was observed:

16. Granting interim maintenance is similar to giving first aid. Chapter IX of the Criminal Procedure Code, 1973, provides a quick remedy by a summary procedure to protect the applicant against starvation and tide over immediate difficulties by a deserted wife or children to secure some reasonable sum by way of maintenance. S. 125(1)(a) of CrPC provides a grant of maintenance to the wife, unable to maintain herself. Proviso to S. 125 CrPC empowers the Magistrate to order monthly allowance for the interim maintenance and also the expenses of such proceeding during its pendency. The foundation of the measures of social Justice enacted by the Legislature lay beneath the sweep of Article 15 (3) of the Constitution of India. It fulfils the concept of a welfare State in a vibrant democracy by safeguarding wives and children and preventing them from the modes of vagrancy and its consequences. Given the above, it would be appropriate for the Courts to direct the person against whom an application is made under S. 125 of the Code to pay some reasonable sum by way of maintenance to the applicant pending the final disposal of the application

23. Therefore, the Court is only concerned with the prevention of vagrancy and destitution at the stage of granting interim maintenance. She cannot be denied maintenance on the ground that she had left her matrimonial home without a reasonable cause.

24. No other point was urged.

25. In view of the above, the present petition is partly allowed and the interim maintenance is reduced from ₹5,000/- to ₹4,500/- per month from the date of filing of the petition.

26. The parties to the petition are directed through their respective counsel to appear before the learned Trial Court on **10.01.2024**.

27. The observation made herein before shall remain confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case.

**(Rakesh Kainthla)**  
**Judge**

20<sup>th</sup> December, 2023  
(Chander)