

HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.

Neutral Citation No. - 2023:AHC:157113

Court No. - 93

Case :- MATTERS UNDER ARTICLE 227 No. - 8162 of 2023

Petitioner : Smt. Parul Tyagi

Respondent : Gaurav Tyagi

Counsel for Petitioner : Rajiv Sisodia

Hon'ble Vinod Diwakar,J.

1. Heard Shri Rajiv Sisodia, learned counsel for the petitioner and perused the record.

2. This petition stems from a series of miscellaneous ineffective orders passed by the Principal Judge, Family Court, Muzaffarnagar in O.S. No.976/11 of 2022. The petitioner has invoked Article 227 of the Constitution of India, seeking a direction to expedite disposal of the aforesaid O.S. No.976/11 of 2022 titled as Parul Tyagi Vs. Gaurav Tyagi. For clarity, the relief sought before this Court is outlined below:

"i. Issue an order or direction, directing the Principal Judge, Family Court No.2, Muzaffarnagar to expedite proceeding of Original Suit No.976/11 of 2022 (Parul Vs. Gaurav), under Section 128 Cr.P.C.

ii. Issue any other order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of this case."

A. Brief Facts and Background of The Case

3. The petitioner, Smt. Parul Tyagi, entered into matrimony with the respondent, Gaurav Tyagi, on 17th February, 2009, adhering to Hindu rituals and ceremonies in Muzaffarnagar, Uttar Pradesh. During the marriage, the petitioner's family spent approximately Rs.15 lacs, and dowry items were presented to the respondent's family within their means. Subsequently, the respondent and his family subjected the petitioner to both mental and physical torment, demanding an additional dowry of Rs.5 lacs. No child was born from this union. In an attempt to meet the in-laws' demands, the petitioner's family gave Rs.50,000/- twice and even gave/gifted a RITZ car; however, the demands remained unsatisfied. Following this, the respondent and his family expelled the petitioner from their residence, issuing threats to kill her if she failed to give Rs.5 lacs. Since then, the petitioner has been residing with her parents.

4. The petitioner claims that she has been living with her parents since 23.7.2017, and is unable to sustain herself. Her husband does not support her or pay maintenance to meet-out her daily chores. The petitioner contends that her husband earns almost Rs.26 lacs a year, whereas, even though she is doctorate from IIT, but is unemployed and finding it hard to sustain herself; besides these contentions, other disputed facts have also been raised by both the parties before the Principal Judge, Family Court, Muzaffarnagar (hereinafter referred to as the "Family Court").

5. By order dated 10.5.2022, the learned Family Court awarded maintenance of Rs.20,000/- per month since 22.8.2017, i.e. the date of filing of the application under section 125 Cr.P.C.

6. The husband-respondent challenged the order dated 10.5.2022 before this Court in Criminal Revision No.2780 of 2022. This Court, vide order dated 17.5.2023, dismissed the aforesaid revision petition and upheld the order passed by the Family Court. The relevant portion is extracted herein below:

"1. Learned counsel for revisionist and learned counsel for opposite party no.2 are present.

2. This Criminal Revision has been preferred against order dated 10.05.2022 passed by Additional Principal Judge, Family Court, Court No.2, Muzaffarnagar in Case No.510 of 2017 (Smt. Parul Tyagi vs. Gaurav Tyagi) by which application under Section 125 Cr.P.C. has been allowed and revisionist has been directed to pay Rs.20,000/- per month as maintenance allowance from the date of application i.e. 22.08.2017 and amount deposited by the revisionist as maintenance in other case shall be adjusted.

3. Learned counsel for revisionist submitted that there is no question of quantum. Revisionist is working as General Manager and opposite party no.2 is a highly educated lady doing PhD. from I.I.T., Delhi and at present doing research in I.I.T., Roorkee and getting Rs.50,000/- per month and Rs.2,00,000/- annually for research purpose. She was also posted in Lovely Professional University, Jalandhar, Punjab as Assistant Professor from where she has resigned. It is also submitted that there is no child between the parties and Rs.15,000/- has been paid by the revisionist under Section 24 of Hindu Marriage Act for maintenance and litigation. Case under Section 13 of Hindu Marriage Act has also been filed by the revisionist. Income tax return of the opposite party no.2 has also been filed and in the income tax return income of opposite party no.2 has been shown above Rs.6,00,000/-. It is further submitted that Rs.6,80,000/- has already been deposited in favour of opposite party no.2 up till February, 2023.

4. Learned counsel for opposite party no.2 submitted that opposite party no.2 is doing research work in I.I.T., Roorkee and the amount of money received by the opposite party no.2 is with regard to research work. At present she is not doing any job and Rs.16,00,000/- is due on revisionist.

5. As revisionist is giving Rs.15,000/- to opposite party no.2 under Section 24 of Hindu Marriage Act which is adjusted towards this payment, remaining amount to be paid by the revisionist is only Rs.5,000/- per month after deducting the amount paid under Section 24 of Hindu Marriage Act. Amount to be paid by the revisionist

in this maintenance case is a meager amount of Rs.5,000/-. Revisionist is working as General Manager and getting a handsome salary.

6. In the present facts and circumstances, there appears no illegality, material irregularity or manifest error in the impugned order. Interference by this Court is not required in this case. Both the parties are highly educated and may settle their dispute peacefully. This Criminal Revision lacks merit and is liable to be dismissed.

7. Accordingly, this Criminal Revision is dismissed.”

7. Because of the non-payment of the maintenance, the petitioner preferred O.S. No.976/11 of 2022, under Section 128 Cr.P.C., for the realisation of the maintenance. The instant case was, first time, listed on 17.8.2022, and since then, the matter has been listed before the Family Court as many as 39 times, and aggrieved by ineffective orders passed by the Family Court, the petitioner has preferred the present petition.

8. For the sake of clarity, it is judicious to have a comprehensive overview over the facts of the case:

a. On 17.9.2009, marriage between the parties was solemnised as per Hindu rites and customs.

b. Since 23.7.2017, the petitioner-wife has been residing with her parents.

c. On 22.8.2017, the petitioner-wife preferred an application under section 125 Cr.P.C. before the Family Court for the award of maintenance.

d. On 10.5.2022, after a long and arduous hearing of four years and nine months, the Family Court awarded maintenance of Rs.20,000/- per month to the petitioner-wife.

e. On 26.6.2022, the respondent-husband preferred a Criminal Revision No.2780 of 2022 before this Court for setting aside the judgment and order dated 10.5.2022 passed by the Family Court.

f. On 17.5.2023, the aforesaid criminal revision was dismissed.

g. On 17.8.2022, the petitioner-wife preferred O.S No.976/11 of 2022, under Section 128 Cr.P.C., before the Family Court, and since then, the aforesaid O.S. is pending disposal.

h. On 28.7.2023, aggrieved by thirty-nine ineffective orders by the Family Court, the petitioner preferred the instant petition under Article 227 of the Constitution of India seeking a direction for expeditious disposal of the proceeding under section 128 Cr.P.C., pending before the Family Court.

9. From the time when the petitioner-wife initially approached the Family Court under Section 125 Cr.P.C. for a maintenance order on 22nd August, 2017, until the filing of the captioned petition under Article 227 of the Constitution of India, nearly six years have been elapsed.

B. Submissions of the Petitioner

10. Shri Rajiv Sisodia, learned counsel appearing on behalf of the petitioner-wife, made the following submissions:

a. On 17.9.2009, the petitioner-wife married the respondent-husband as per Hindu rites and ceremonies at Jai Hind Inter College, Kasba Charthawal, District Muzaffarnagar, and the parents of the petitioner expended nearly Rs.15 lacs in the solemnisation of marriage, besides the amount expended on other necessary arrangements.

b. Since the in-laws were not happy with the dowry brought by the petitioner-wife, they raised an additional demand of Rs.5 lacs and started to harass the petitioner to build up pressure to meet out the said demand. The parents of the petitioner gave Rs.50,000/- each on two occasions to the in-laws and also purchased a RITZ car to their satisfaction after the solemnisation of the marriage.

c. The petitioner contends that her husband is incapable of conceiving his wife. She requested her husband and in-laws to seek a medical opinion for curing her husband's incapacity as would be advised by the doctor. Rather than visiting a doctor, the petitioner-wife was taunted for not delivering a child.

d. On 23.7.2017, the petitioner-wife was thrown out of her matrimonial house after beating her, and since then, she has been living with her parents at her parental house.

e. The respondent-husband is a bodily abled person and has done an M.Sc. in Agriculture and an MBA. To supplement his arguments, the counsel further submits that the respondent-husband is working as a General Manager in Papertech Nova X Company situated at B-10, Sec-9, HUDA City Centre, Gurugram, Haryana, and also earning a handsome amount from real estate and share market.

f. The order dated 10.5.2022 passed by the Family Court has not been complied by the respondent-husband till date, and the petitioner-wife is facing financial hardship and is unable to maintain herself.

g. The Family Court is passing routine ineffective orders, which in-effect, are causing further financial distress to the petitioner-wife.

h. Section 125 Cr.P.C. read with Section 128 Cr.P.C. have lost its constitutional objectivity in facts-circumstances of the case and invites this Court's power of superintendence over all courts in relation to which it exercises its jurisdiction.

11. Before I discuss the law and its application, I must say that a delay in the disposal of cases erodes public faith in the judicial process. The idea of awarding maintenance is based on the principle of ensuring financial support for spouses, who may not have the means to support themselves. The intent to provide instant financial stability is to prevent any undue hardship to the impecunious spouse.

C. Constitutional Objectivity of Section 125 Cr.P.C. and Purposive Interpretation

12. Section 125 Cr.P.C., provides for maintenance of wives, children and parents if any person has sufficient means still neglect or refuses to maintain- his wife, his legitimate or illegitimate child, his legitimate or

illegitimate child (not being a married daughter), who has attained majority and by reason or any physical or mental abnormality or injury unable to maintain herself, and or her father or mother, who is unable to maintain himself/herself.

13. In the current context, maintenance, referred to as spousal support or alimony, represents a legal duty wherein one spouse is obligated to offer financial support to the other after separation or divorce. The underlying principle of maintenance is to alleviate the repercussions of a marriage dissolution, especially when one spouse has relied on the other for financial support throughout the marriage. This obligation may persist even after divorce, subject to specific conditions established by statutory regulations or judgments.

14. Historically, English law recognised a husband's duty to support his wife, rooted in the common law principle of "coverture", which treated a married couple as a single legal entity, with the husband as head. However, as societal norms evolved, so did the legal landscape, leading to changes in spousal maintenance.

15. The origins of coverture can be traced back to medieval times when society was largely hierarchical. Under feudalism, women were considered the property of their fathers until they were transferred to their husbands upon marriage. This transfer of ownership was legally formalised through coverture, which subsumed in the wife's legal entity into that of her husband's.

16. The common law principle of coverture began to erode in the 19th century as legal reforms and social movements gained traction. In England, landmark legislation such as the Married Women's Property Act of 1870 and subsequent Acts granted married women limited property rights and the ability to own property separately from their husbands.

17. Prior to Married Women's Property Rights Act, 1874, and Indian Succession Act, 1865 with regard to maintenance and inheritance of property by women in colonial India, historically, marriage is considered a sacred and essential institution in India. The marriage is considered a samskara, one of the sacred rites of passage. The institution of marriage, as described in the ancient text, reflects a complex interplay of social, spiritual and familial responsibilities. Historical norms often circumscribed women's rights, there are references for provisions for allotment of property for wives in Ya'jnyawalkya's text. Their rights to property, maintenance and respect were recognised. The husband's solemn duty was to maintain a wife during her lifetime, and there was no concept of divorce. The wife was entitled in the share of the husband's estate after his demise, according to old Hindu Dharmshashtra.

18. In 1868, the British Parliament introduced the Married Women's Property Bill, which aimed to grant married women the same legal rights as unmarried women. After two years of revisions, the Parliament passed the Married Women's Property Act of 1870. This landmark legislation permitted the married women to retain control over their earnings and investments independently of their husbands, inherit modest sums, hold property acquired through rental or inheritance from close family members, and established joint parental liability for their children. However, it should be noted that despite these advances, married women still did not enjoy complete financial independence, as the majority of their finances and property were still legally under the control of their husbands. Additionally, these provisions applied only to marriages contracted after the Act's implementation, leaving women already married without the ability to reclaim their property rights.

19. In the Indian context, the Married Women's Property Act of 1874 was an extension of similar principles, but adapted to address the distinct cultural and social norms prevailing in colonial India. These legislative advancements were part of a broader global movement in the 19th century aimed to recognizing and promoting women's rights.

20. In India, the maintenance of a wife or spouse, in general, is governed by statutes, case laws and equity principles. As societal norms continuity evolved, the concept of spousal maintenance continued to be adopted, ensuring that it remains relevant and just in the ever-changing landscape of family law.

21. Section 125 Cr.P.C., as amended from time to time, and State amendment² provides for immediate relief for his/her support and necessary expenses of the proceedings during the pendency of the proceedings as such monthly allowance and such expenses of the proceedings as the court consider reasonable, and such order shall be enforceable as an order of maintenance.

22. In case of spouse, the purpose and object of Section 125 Cr.P.C. is to provide immediate relief to an applicant. An application under Section 125 Cr.P.C. is predicated on two conditions; i) the husband has sufficient means, ii) and "neglects" to maintain his wife, who is unable to maintain herself. The relevant portion of section 125 Cr.P.C., and Code of Criminal Procedure (Uttar Pradesh Amendment Acts, 1999, 2000 & 2011) is extracted herein below;

"Section 125. Order for maintenance of wives, children and parents.(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate¹ * * * as such Magistrate thinks fit and to pay the same to

such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation.--For the purposes of this Chapter,

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

[(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.]

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's 4[allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.--If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an 5[allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

State Amendments

Uttar Pradesh

In section 125 of the Code of Criminal Procedure, 1973, hereinafter referred to as the principal Act —

(a) in sub-section (1), for the words "five hundred only" the words "five thousand only" shall be substituted.

(b) after sub-section (5), the following sub-section shall be inserted, namely:— "(6) Where in a proceeding under this section it appears to the Magistrate that the person claiming maintenance is in need of immediate relief for his support and the necessary expenses of the proceeding, the Magistrate may, in his application, order the person against whom the maintenance is claimed, to pay to the person claiming the maintenance, during the pendency of the proceeding such monthly allowance not exceeding five thousand rupees and such expenses of the proceeding as the Magistrate consider reasonable and such order shall be enforceable as an order of maintenance.

[Vide Uttar Pradesh Act 36 of 2000, s. 2]

Uttar Pradesh

In section 125 of the Code of Criminal Procedure, 1973 as amended in its application to Uttar Pradesh hereinafter referred to as the principal Act in sub-section (6) the words "not exceeding five thousand rupees" shall be omitted.

[Vide Uttar Pradesh Act 15 of 2011, s. 2]"

23. Section 125 of Cr.P.C. was conceived to alleviate the agony, anguish, and financial suffering of a woman who has left her matrimonial home for the reasons set-forth in the provision so that the court can make appropriate arrangements for her and her children if they are with her. The term "sustenance" does not always imply that one is living an animal's existence. She has the legal right to conduct her life in the same manner as she would have in her husband's home³.

24. The maintenance is a constitutional right and an element of universal human rights. The purpose of paying maintenance is twofold; i) First, to prevent vagrancy as a result of strained husband-wife relationships, ii) and to guarantee that the poor litigating spouse is not crippled as a result of a lack of funds to defend or prosecute the case⁴.

25. The object of maintenance proceeding is not to punish a person for his past neglect, but to prevent vagrancy by compelling those, who can provide support to those who are unable to support themselves and who have a moral claim to support⁵. Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children falls within constitution sweep of Article 15(3) re-enforced by Article 39 of the Constitution of India, and the object of maintenance is to prevent the vagrancy and destitution of a deserted wife by providing her food, clothing, and shelter through a speedy remedy⁶. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents who are unable to maintain themselves⁷.

26. Where the personal income of the wife is insufficient she can claim maintenance under section 125 CrPC. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband⁵.

27. The Supreme Court has got the occasion to frame cogent and well-structured guidelines in celebrated judgement of Rajnesh Case v. Neha and another⁸, the Supreme Court considered the framing of guidelines in certain aspects pertaining to grant of maintenance/interim maintenance against a person having sufficient means, and neglect or refuse to maintain his wife, children and parents. There are different statutes providing for making an application for grant of maintenance/interim maintenance, which provides an independent and distinct remedy with specific objective and purpose. The Supreme Court by invoking extraordinary power vests under Article 136 & 144 of the Constitution of India, issued comprehensive guidelines to the Family Courts.

28. The Rajnesh Case (supra) is not a stand-alone case where the Supreme Court has exercised its power enshrined under Article 136 read with Article 142 of the Constitution of India, to issue guidelines.

29. Over the years, the Supreme Court has adverted to several landmark judgments that have significantly impacted the interpretation and application of Article 141 of the Constitution of India. In Menka Gandhi Case⁹, the Supreme Court has expanded the scope of Article 141 and laid down the principle that the procedure established by law must be reasonable, fair and just. The judgment re-enforced the principles of judicial review and the court's role in interpreting and protecting fundamental rights. In Vishaka Case¹⁰, the Supreme Court has laid down the guidelines to prevent and address sexual harassment in the work place. Again in the celebrated judgment of D.K. Basu Case¹¹ the Supreme Court has laid down guidelines to prevent custodial torture and protected the rights of the arrested individuals. The Supreme Court issued guidelines for the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 in the Juvenile Justice Committee Case¹². Medha Kotwal Lele Case¹³ led to the formulation of guidelines for ensuring proper implementation of the Right to Education Act, 2009. In National Legal Service Authority Case¹⁴, the Supreme Court issued guidelines for the protection of the rights of a transgender individual, recognising their rights to self-identification and protection from discrimination. Likewise, in Sheela Barse Case¹⁵, the Supreme Court issued guidelines for the inhumane treatment of women prisoners, including pregnant and lactating women and children in jails.

30. It's important to note that when the Supreme Court provides guidelines in the judgments, the interpretation and uniform application of these guidelines by sub-ordinate courts may vary in special facts-circumstances of the case, but the binding nature of these guidelines ensures that they are considered and, uniformly and consistently followed by lower courts in their decision-making process.

31. In spite of the time-frame being scribed by the various statutes and guidelines by the Supreme Court for disposal of interim applications, the Constitutional Courts noticed, in the vast majority of the cases, the applications are not disposed off within the time frame prescribed. Such a lackadaisical approach of the subordinate courts invited the attention of the Supreme Court in Rajnesh Case (supra), and by invoking extraordinary powers under Article 136 read with Article 142 of the Constitution of India, issued well-structured guidelines to the sub-ordinate courts.

32. In the instant case, the petitioner had filed an application under section 125 Cr.P.C. for the award of maintenance, which remained pending before the court for about four years and nine months. The respondent-husband challenged the order passed by the learned Family Court through Criminal Revision No.2780 of 2022, and after dismissal by this Court, the petitioner-wife filed an execution petition for compliance of enforcement of order dated 10.5.2022, the case was listed as many as 39 times. Aggrieved by ineffective hearings, the petitioner-wife preferred a petition under Article 227 of the Constitution of India seeking early disposal of the aforesaid execution petition. The petitioner-wife was forced to move successive petitions before the court for award of maintenance time to time. In the foregoing, this Court deems it appropriate to devise certain mechanisms for the sub-ordinate courts in the background of Rajnesh Case (supra), enabling the courts to grant of maintenance, payment of interim maintenance, criteria of determining the quantum of maintenance and speedy enforcement of the order of maintenance passed by Family Courts.

33. The Supreme Court in Rajnesh Case (supra), in the opening paragraph, has administered the philosophy behind the enactment of maintenance laws in India. The relevant portion of the judgment is extracted herein

below:

“13. Maintenance laws have been enacted as a measure of social justice to provide recourse to dependent wives and children for their financial support, so as to prevent them from falling into destitution and vagrancy. Article 15(3) of the Constitution of India provides that:

“15. (3) Nothing in this article shall prevent the State from making any special provision for women and children.”

Article 15(3) reinforced by Article 39 of the Constitution of India, which envisages a positive role for the State in fostering change towards the empowerment of women, led to the enactment of various legislations from time to time.

14. Krishna Iyer, J. in his judgment in Ramesh Chander Kaushal v. Veena Kaushal [Ramesh Chander Kaushal v. Veena Kaushal, (1978) 4 SCC 70: 1978 SCC (Cri) 508] held that the object of maintenance laws is: (SCC p. 74, para 9)

“9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause- the cause of the derelicts.”

34. Part B of the Rajnesh Case (supra) deals with general guidelines and directions to the Family Courts containing the issue of overlapping of jurisdiction of the Family Courts created in respect of statutory provisions under various enactments viz;

i. Special Marriage Act, 1954, Hindu Marriage Act, 1955, Hindu Adoption Act, 1956, Section 24 Cr.P.C., and Protection of Women from Domestic Violence Act, 2005.

ii. Payment of interim maintenance,

iii. Criteria for determining quantum of maintenance

iv. Date from which maintenance to be awarded

v. Enforcement of order of maintenance

vi. Final directions

35. In the wake of Rajnesh Case (supra), it's high time to deliberate upon the measures that need to be adopted by the Family Courts for early disposal of the interim maintenance/maintenance application, and enforcement of the order of maintenance so passed.

36. Despite the statutory provisions granting a time-bound period for disposal proceedings for interim maintenance, the Supreme Court observed that the applications remained pending for several years in most cases. The delays are caused by various factors, such as tremendous docket pressure on the Family Courts, repetitive adjournments sought by the parties, enormous time taken for completion of pleadings at the interim stage itself, etc. The pendency of applications for maintenance at the interim stage for several years defeats the very object of the legislation.

37. The Supreme Court in para-65 of the Rajnesh Case (supra) observed the requirement of pleadings and inter-alia held as under:

“65. The party claiming maintenance either as a spouse, or as a partner in a civil union, live-in relationship, common law marriage, should be required to file a concise application for interim maintenance with limited pleadings, along with an Affidavit of Disclosure of Assets and Liabilities before the court concerned, as a mandatory requirement. On the basis of the pleadings filed by both parties and the Affidavits of Disclosure, the court would be in a position to make an objective assessment of the approximate amount to be awarded towards maintenance at the interim stage.”

38. While deliberating upon the various facets of the issues that may preclude courts from passing reasoned orders, framed necessary guidelines by invoking powers vests under Article 136 read with Article 142 of the Constitution of India. A need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings invited the attention of the court, and thus, the Supreme Court framed the following guidelines:

“72.1. (a) 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 Family Court/District Court/Magistrate's Court concerned, as the case may be, throughout the country;

72.2. (b) The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;

72.3. (c) The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks. The courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent. If the respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for this purpose, the court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings [Kaushalya v. Mukesh Jain, (2020) 17 SCC 822 : 2019 SCC OnLine SC 1915]. On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the

application for maintenance on the basis of the affidavit filed by the applicant and the pleadings on record; 72.4. (d) The above format may be modified by the court concerned, if the exigencies of a case require the same. It would be left to the judicial discretion of the court concerned to issue necessary directions in this regard.

72.5. (e) If apart from the information contained in the Affidavits of Disclosure, any further information is required, the court concerned may pass appropriate orders in respect thereof.

72.6. (f) If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek permission of the court to serve interrogatories, and seek production of relevant documents from the opposite party under Order 11 CPC. On filing of the affidavit, the court may invoke the provisions of Order 10 CPC or Section 165 of the Evidence Act, 1872, if it considers it necessary to do so. The income of one party is often not within the knowledge of the other spouse. The court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned.

72.7. (g) If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended/supplementary affidavit, which would be considered by the court at the time of final determination.

72.8. (h) The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the court may consider initiation of proceeding under Section 340 CrPC, and for contempt of court.

72.9. (i) In case the parties belong to the economically weaker sections ("EWS"), or are living below the poverty line ("BPL"), or are casual labourers, the requirement of filing the affidavit would be dispensed with.

72.10. (j) The Family Court/District Court/Magistrate's Court concerned must make an endeavour to decide the IA 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.

72.11. (k) A professional Marriage Counsellor must be made available in every Family Court."

39. In Part VI of the Rajnesh Case (supra), the Supreme Court has passed the final directions, and the relevant portion is extracted as under:

"127. 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

128. 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:

128.1. (i) Where successive claims for maintenance are made by a party under different statutes, the court would consider an adjustment or set-off, of the amount awarded in the previous proceeding(s), while determining whether any further amount is to be awarded in the subsequent proceeding.

128.2. (ii) It is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding.

128.3. (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

129. 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 Family Court/District Court/Magistrates Court concerned, as the case may be, throughout the country.

(c) Criteria for determining the quantum of maintenance

130. 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. The aforesaid factors are however not exhaustive, and the court concerned 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

131. 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

132. For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28-A of the Hindu Marriage Act, 1955; Section 20(6) of the DV Act; and Section 128 of CrPC, as 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 read with Order 21.

40. In the aforesaid guidelines, the Supreme Court was of the view that the objective of granting interim/permanent maintenance is to ensure that the dependent spouse is not reduced to destitution or

vagrancy on account of the failure of the marriage, and as a punishment to the spouse.

41. The factors that 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-caring, and looking after adult members of the family; reasonable costs of litigation for a non-working wife¹⁶.

42. On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent 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 qualifications¹⁷.

43. 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 home¹⁸. 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 derives 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.

44. The courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The Supreme Court has provided guidance on this issue in catena of judgments. Merely because the wife is capable of earning, it would not be sufficient ground to reduce the maintenance awarded by the Family Court. The court has to determine whether the wife's income is sufficient to enable her to maintain herself in accordance with her husband's lifestyle in the matrimonial home as held in Chheturbhuj Case (supra). In Sunia Kachwah Case¹⁹, it has held that the court has to determine whether the income of the wife, even though she is well educated and employed and had sufficient income, would not be denuded financial assistance from her husband merely because she was earning some income; it could not be a ground to reject the claim for maintenance. In Shamima Farooqui Case²⁰, the Supreme Court has also held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife.

45. In Chandra Prakash Case²¹, it was held that 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. The onus is on the husband to establish that there are sufficient grounds to show that he is unable to maintain his family and discharge his legal obligation for reasons beyond his control. If the husband does not disclose the exact amount of his income, the court may draw an adverse inference.

46. In Badshah v. Urmila Badshah Godse Case²², the Supreme Court has observed to interpret Section 125 Cr.P.C. and held as under: (SCC p. 196, para 13)

"13.3.... purposive interpretation needs to be given to the provisions of Section 125 CrPC. While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve "social justice" which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society."

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D. Enforcement of Orders of Maintenance

47. The enforcement of the maintenance order is the most challenging task the applicants encounter. If the maintenance is not paid in a timely manner, it defeats the very objective of social welfare. The execution petitions usually remain pending for years, completely nullifying the law's object. The directions of the interim maintenance and expenses of the litigation is one of the urgency, and it must be decided at the earliest. The law takes care that nobody is disabled from prosecuting or defending the matrimonial case by starvation or lack of funds²³.

48. The order of maintenance may be enforced like a decree of a civil court. The striking off the defence of the respondent is an order which ought to be passed as the last resort if the courts find default to be wilful and contumacious, particularly to a dependent unemployed wife and minor children. Contempt proceedings for wilful disobedience may be initiated before the appropriate court²⁴.

49. Section 125(3) Cr.P.C. empowers the court to issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each months

remaining unpaid maintenance or interim maintenance after the execution of the warrant. The provision provides imprisonment for a term which may extend to one month or until payment, if sooner made. It further provides that no warrant shall be issued to the recovery of dues under this section unless application be made to the court to levy such amount during the period of one year from the date on which it becomes due.

E. The Consequence of Failing to Enforce Constitutional Court Orders and Measures to Enhance Judicial Competence

50. The rule of law is not a mere abstract concept; it is a dynamic framework that ensures justice, equality, and accountability within a society. The rule of law ensures that the legal system operates fairly, just and predictable. The Supreme Court's judgments and guidelines serve as binding precedents for all courts. However, if sub-ordinate courts do not follow the guidelines laid down by the Supreme Court, it can have profound implications for the law of the land.

51. Purity of judicial administration is necessary; a condition precedent for success of independence of administration of justice. In essence, the equal, uniform and consistent application of law is the hallmark of the judicial administration. The primary reason for enforcing superior courts' guidelines is to preserve the authority and credibility of the judiciary. If their guidelines are routinely ignored, for whatever reasons, it erodes public trust in the legal system and sets dangerous precedents. It can lead to inconsistent application of the law, which undermines the principles of legal certainty.

52. The non-adherence of the Supreme Court guidelines by sub-ordinate courts undermines the very essence of the rule of law, leading to unequal treatment leading to erosion of judicial precedent, perpetuating injustice and inequality, loss of public confidence in the judiciary by the citizens, and a fragmented legal landscape, where each court operates independently.

53. Ensuring consistent compliance with Supreme Court guidelines is not just a judicial obligation- it is a fundamental responsibility to preserve the democratic values enshrined in the Indian Constitution. For effective and meaningful implementation of the directions of the Constitutional Courts, the capacity building and the upgradation of judicial skill of Family Court Judges are necessary.

54. Recently, in *Santander Kumar Antil Case*²⁵, the Supreme Court has made it categorical that its judgment is the law of the land, and there is no question of anyone violating the principles laid down. The Court further observed that suffice to say that wherever *Santander Kumar Antil Case* (supra) is applicable, its principles must be followed by all courts for grant of bail to an accused, including those who are not arrested at the time of filing of the charge-sheet, and directed this Court to send two judicial officers for training at the State Judicial Academy for upgradation of their skills. Relevant portion of the judgment is extracted herein below: "Certainly, the learned Judge concerned meets the parameters for upgradation of his skills in a Judicial Academy and the needful be done by the High Court."

The Court was of the view that it is the duty of High Courts to ensure that the sub-ordinate judiciary under their supervision follows the law of the land. If some Magistrates are passing such orders, it may even require judicial work to be withdrawn and those Magistrates to be sent to the Judicial Academies for upgradation of their skills for some time.

55. In light of the observations mentioned above, it is imperative to enhance the capacity of judges, particularly Family Court Judges, to ensure the effective implementation of the orders passed by Supreme Court ensuring timely justice.

56. The Family Court is the first legal forum a litigant approaches in matrimonial disputes, where all contesting parties physically participate in proceedings. The Family Courts play a vital role in fostering faith in a more equitable and survivor-focused judicial system, essential for dispensing justice. Trial courts, as the frontlines of our legal system, introduce litigants to the legal process, and their interactions leave long lasting psychological and sociological impressions on litigants. So, the workshop and the training programs for the capacity building of the judges are crucial for their enrichment.

57. The enhancement of emotional intelligence is crucial for judges to better comprehend their own emotions and the emotions of others. Family Court Judges must undergo comprehensive gender sensitization training aimed to fostering an understanding of gender-based violence, societal biases, and the unique challenges faced by women. Judges should also receive training on recognizing and comprehending the impact of trauma on victims of gender-based violence. Moreover, they should be educated/ trained in the concept of intersectionality, which involves understanding how multiple forms of discrimination, such as caste, class, and sexuality, can intersect with gender-based violence. Additionally, judges should acquire the skills needed to facilitate dialogue, negotiation, and restorative justice practices when appropriate, all while maintaining a victim-centered and survivor-focused approach. They should also be prepared to provide information and referrals to services such as counselling, legal aid, and shelters in order to aid survivors in their healing and recovery beyond their legal expertise. Notably, in 2016, the then Hon'ble The Chief Justice of India, Mr. Deepak Misra J., requested all High Courts to establish Gender Sensitization Committees tasked with sensitizing Family Court Judges and conducting regular seminars and training programs to enhance their skills.

F. Conclusion

58. The law established by the Supreme Court of India is indeed binding upon all subordinate courts in the country. Article 142 of the Constitution of India empowers the Supreme Court to deliver judgments and

orders that are necessary for "complete justice". It also states that these judgments and orders shall be enforceable throughout the territory of India. As a result, any decision or law propounded by the Supreme Court becomes a binding precedent for all lower or subordinate courts in the country, and they are required to follow and apply the same while deciding similar cases. This principle of law is crucial for maintaining consistency, uniformity, and the rule of law within the judicial system.

59. Indeed, it is a matter of record that the Supreme Court has consistently issued numerous directions in various cases to ensure the early and speedy disposal of applications filed under section 125 Cr.P.C. However, despite these directions, the desired impact is often not seen on the ground. The Judges must bear in mind that their role extends beyond merely dispensing justice. The time consumed by courts while deciding an application for maintenance is the critical component in such cases. If the maintenance is awarded to a litigant after years of struggle in courts, sometimes it loses its relevancy, and the poor litigant accepts her/his suffering as her/his destiny.

60. The role of a judge is truly a divine function, a sacred duty bestowed upon individuals to administer justice, safeguard the rights of the people, and uphold the rule of law. The judges are not just mere arbiters; they are custodians of harmony and protectors of the best interests of litigants. The judge's duty encompasses being the guardian of morality and impartiality.

61. The judges must fulfil their role as catalysts for providing speedy and effective remedies to litigants, thus ensuring public confidence in the justice system and the maintenance of a just society. This responsibility demands an unwavering commitment to upholding the principles of justice, fairness, and the rule of law in every decision judges make.

62. By adhering to the sacred duty and preserving the sanctity of the Judge's role, the judges make a significant difference in the lives of those who seek justice before them and contribute to a more just and equitable society.

63. For legal professionals, a case for them may be a professional engagement, and for Judges- a case listed for hearing may be a routine work, but for the litigants, it is a matter of hope, expectation, and the quest for justice.

64. Litigants approach the courts with grievances, seeking resolution and redress for their issues. Their cases are not just legal matters but significant aspects of their lives, rights, and property are involved. The outcome of the case can profoundly impact their well-being, livelihood, and sense of security.

65. As judges, it is essential to recognise the weight of responsibility that lies on judges' shoulders. Their decisions can profoundly affect the lives of those before the court and society at large, and it is crucial to approach each case with sensitivity, empathy, and a deep understanding of the human aspect involved.

66. By doing so, the judges can instil a sense of trust and confidence in the justice system for litigants, re-enforcing the belief that the courts are indeed the guardians of their rights and safety. The judges' commitment to fairness, impartiality, and timely resolution plays a pivotal role in upholding the rule of law and fostering a just society where an individual feel protected, respected, and valued.

67. As judicial officers, the judges must recognise the significance of each case before them and the faith litigant's place in the judicial system. The judges must strive to uphold the principles of justice, fairness, and efficiency in handling cases. By doing so, the judges can reduce the backlog of cases and ensure that litigants receive timely justice.

68. Addressing litigants' concerns and understanding the profound impact that legal proceedings have on their lives can foster public confidence in the judiciary and re-enforce the belief that the courts are indeed the guardians of justice and enure protection. It is essential for the courts to embrace measures to expedite the resolution of cases and fulfil the legitimate expectations of those who approach the legal system in search of justice.

69. This Court has also noticed on numerous occasions that the application/petitions for maintenance by legally wedded wives and old-aged parents are kept pending for years and years without an effective hearing, and they are not timely decided or attended to.

70. In due course or over time, when a litigant finally receives some relief from the Court after a long and arduous legal battle, it may not serve the immediate purpose. By the time, the litigant get relief from the courts, have already endured substantial hardship and uncertainty. The associated stress, financial burdens, and emotional tolls makes a litigant disappointed.

71. The relief, though appreciated, may no longer hold the same significance or impact as it would have if provided earlier or more expeditiously. The delay in obtaining justice can diminish the litigant's sense of satisfaction and may leave them feeling exhausted and disillusioned with the legal system.

72. Efforts to expedite the legal process and provide timely relief are crucial for the effectiveness of justice and ensuring that litigants receive fair and meaningful outcomes. It is essential for the judges to recognise the significance of time in the pursuit of justice and work towards reducing delays, improving efficiency, and providing a sense of closure to those seeking redress through the legal system.

73. It is indeed regrettable that the trial court failed to grasp the objective of the pronouncement of various judgments in this regard, along with its purpose and the consequences of non-compliance with the directions issued by the Supreme Court time and again. This failure may be attributed to the substantial backlog of pending cases or possibly other reasons that an individual might attempt to justify. However, from a litigant's

perspective, the Court represents a forum in which they place their trust and hope for their case's speedy and effective disposal. For them, seeking justice is not merely a legal process; it is a matter of utmost importance that directly impacts their life, well-being, and rights.

74. The judges have to guide themselves by our constitution, which lays down the powers of all Courts. In England, there is a court of universal jurisdiction, whereas in India, the Constitution prescribes the jurisdiction of our Supreme Court. The Constitution also provides how the jurisdiction of the High Courts is prescribed. The jurisdiction of other Courts is to be found in the statutes setting them up. Thus, in our country, all courts are in a sense, courts of limited jurisdiction.

75. The power of superintendence cannot merely be described as an administrative power is correct, for in addition to the administrative power, specifically enumerated a power partaking for limited judicial character has been added. The power essentially is meant only to see whether a court or Tribunal has active within its bounds or not and is ancillary to the administrative powers conferred by Article 227 of the Constitution of India²⁶.

76. In TNG Kumar Case, a 3- judge bench of the Supreme Court has observed that it is true that the power of superintendence conferred on the High Court under Article 227 of the Constitution of India is both administrative and judicial, but such power is to be exercised sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority. In any event, the power of superintendence cannot be exercised to influence the subordinate judiciary to pass any order or judgment in a particular manner²⁷.

77. In Jasbir Singh v. State of Punjab²⁸ the Supreme Court held that even while invoking the provisions of Article 227 of the Constitution, it is provided that the High Court would exercise such powers most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority. The power of superintendence exercised over the subordinate courts and tribunals does not imply that the High Court can intervene in the judicial functions of the lower judiciary. The independence of the subordinate courts in the discharge of their judicial functions is of paramount importance, just as the independence of the superior courts in the discharge of their judicial functions. It is the members of the subordinate judiciary who directly interact with the parties in the course of proceedings of the case and therefore, it is no less important that their independence should be protected effectively to the satisfaction of the litigants.

78. The primary objective of Article 227 is to ensure the proper administration of justice at all levels of the judicial hierarchy. This includes correcting errors, preventing miscarriages of justice, and maintaining uniformity in applying laws. The Family Courts are not consistently and uniformly following the guidelines passed by the Supreme Court in Rajnesh Case (supra), I have noticed in the instant case, and this case is not an isolated case, this Court frequently gets such cases where the mandatory provision under section 125(3) Cr.P.C. and time-to-time guidelines issued by the Supreme Court in this regard are not followed consistently and uniformly by sub-ordinate courts.

79. In accordance with the imperative need for the consistent and uniform application of the guidelines issued by the Supreme Court in Rajnesh Case (supra), this Court deems it necessary to formulate guidelines in the exercise of its authority under Article 227 of the Constitution of India.

80. The issuance of mandatory injunctions by High Courts to subordinate courts in the light of Rajnesh Case (supra) is an exercise forging unity in the halls of justice. However, it is essential to view these directives through the lens of a broader commitment to justice, discipline, and emotional intelligence ennoblement of judges in the judicial system. These injunctions do not undermine the independence of subordinate courts but rather seek to harmonise the legal landscape, ensuring fairness and consistency in the application of the law.

81. There are times when the very fabric of justice requires stitching together for the sake of uniformity and adherence to the law. The purpose of such injunctions is to ensure informal compliance with the directives issued by the Supreme Court. While the notion of subordination might seem discordant with the principles of judicial independence, although it may appear painful and potentially disgraceful, but such directives are essential for maintaining judicial discipline, fostering emotional intelligence ennoblement among Family Court Judges, and recognizing the profound impact of trauma on victims of gender-based violence.

82. At its core, the legal system operates on the principle of uniformity and consistency in the application of laws and principles. The Family Court Judges often deal with cases fraught with emotional turmoil, where parties involved are deeply affected by their circumstances. To navigate these emotionally charged waters, it is essential for judges to possess a high degree of emotional intelligence. This notion is particularly critical when dealing with complex cases, such as those involving matrimonial disputes and gender-based violence, where it is tough to find out what went wrong within the four walls.

83. Subordinate courts, while indeed independent, sometimes diverge from established legal precedents or directives from higher courts, creating confusion and injustice. To bridge this gap, High Courts may issue mandatory injunctions, setting forth guidelines to be followed by the subordinate courts. Such injunctions aim to maintain the integrity of the legal system, ensuring that justice is administered fairly and consistently across the board.

84. One may argue that imposing mandatory injunctions upon subordinate courts could be seen as an affront to their independence and competence. This Court, being fully aware of this dilemma, is often reluctant to

issue such directives. However, it is crucial to distinguish between a legitimate exercise of judicial authority and an arbitrary imposition of power. The issuance of mandatory injunctions is not an act of disdain but rather a measure taken with the utmost responsibility. This court understands the delicate balance between maintaining the dignity of subordinate courts and safeguarding the integrity of the justice system as a whole. 85. Mandatory injunctions can, therefore, serve as a means to elevate the quality of justice dispensed in family court proceedings, making the legal system more responsive to the needs of the vulnerable by upholding the law of the land.

86. Thus, these injunctions do not undermine the independence of subordinate courts but rather seek to harmonize the legal landscape, ensuring fairness and consistency in the application of the law. Moreover, they play a crucial role in recognizing and addressing the trauma experienced by victims of gender-based matrimonial violence, ultimately promoting a more empathetic and just society.

87. In the preceding discussions, drawing from Rajnesh Case (supra), where comprehensive and well-structured directives have been issued to the Family Court Judges. The primary objective behind formulating underline guidelines, in the context of Rajnesh Case (supra), is to establish a mechanism that enables Family Court Judges to consistently and effectively enforce orders issued by the Supreme Court.

G. Guidelines to the Family Courts

87.1 The Family Court Judge shall ensure compliance of the following guidelines in maintenance proceedings:

- i) Both parties must submit the Affidavit of Disclosure of Assets and Liabilities as Enclosure-I or II (as applicable), as provided in the Rajnesh Case (supra).
- ii) The memo of parties shall include the parties' current mobile number, email address (if available), and the latest residential and official addresses, particularly if the applicant/respondent is employed.
- iii) The memo of parties shall also specifically mention the name of the concerned police station, where the applicant and respondent resides and works (as applicable).
- iv) Additionally, the Family Court Judge must ensure that Enclosure-I or II, as applicable, are accompanied by an affidavit from the respondent, containing the following details:
 - a) Permanent and current address of the respondent.
 - b) Mobile number of the respondent for communication during the pendency of the petition.
 - c) Email ID and WhatsApp number, if any.
 - d) Name and address of the respondent's employer, along with a telephone number.
 - e) An undertaking from the respondent to promptly inform the court through an affidavit if there is any changes to his address, mobile number, E-mail ID, WhatsApp number, residential address, workplace, or employer's name.

87.2 Upon receiving an application for maintenance, the Family Court shall include the following specifics in the initial order:

- i) Mandatory requirement of an Affidavit of Disclosure of Assets and Liabilities, as per Enclosure-I & II, whichever is applicable, along with the reply.
- ii) The respondent shall be given two opportunities for filing a reply, and the application for interim maintenance shall be decided in less than six months.
- iii) The respondent must submit the reply within four weeks.
- iv) If the affidavit is not filed within four weeks, the court will proceed based on the applicant's submission and the existing pleadings to decide the application. If the respondent repeatedly delays in filing the reply with the affidavit, requesting more than two adjournments, the court may exercise its authority to strike off the respondent's defence, provided it determines that the delays are intentional and obstructive, causing undue disruptions to the proceedings. In such cases, the Family Court may proceed to adjudicate the maintenance application based on the applicant's submitted affidavit and the existing pleadings.
- v) The order shall indicate that false statements in the Affidavit of Disclosure of Assets and Liabilities may lead to proceedings under section 340 Cr.P.C. besides contempt of court. It should also explain the ingredients of section 340 Cr.P.C., the potential criminal prosecution in IPC, and the maximum sentence for such offences, if proved in court.

87.3 The Family Court shall employ all legally permissible methods of serving notices to the respondent, using persuasive measures as may be necessary. The Family Court shall develop practical and effective mechanisms to ensure successful service on the respondent, aligning with the objectives and principles of these guidelines. If the court determines that the Process Server/Postman/Police Officer has submitted a routine, repetitive service report (e.g., citing unclaimed postal articles, locked premises, addressee left the address, or an unknown address), it may hold the officer accountable in accordance with the law. The Family Court may also explore modern methods of service facilitated by internet access, including courier services, e-mail, or instant messaging platforms like WhatsApp and other electronic media. The essence of service lies in ensuring that the proceedings are duly conveyed to the respondents or contesting parties. Service on a litigant can be accomplished through e-mail or phone contact²⁹. Serving notice, summons, and exchange of pleadings, service via e-mail, fax, or commonly used instant messaging services like WhatsApp is considered valid³⁰.

87.4 If either party disputes the information declared in the Affidavit of Disclosure of Assets and Liabilities,

the aggrieved party has the right to seek the other party to produce the relevant documents in question 31.

87.5 To determine the amount of maintenance, the Family Court Judge shall adhere to the criteria outlined in Part-3 of the Rajnesh Case (supra). In cases where the wife has her own income, this shall not preclude her from being eligible to receive maintenance from her husband. The court must assess whether the wife's income allows her to sustain a lifestyle commensurate with that of her husband in her matrimonial home 32.

87.6 It is assumed that an able-bodied husband is capable of earning enough to support his wife and children. For interim maintenance determination, the minimum wage rates of Uttar Pradesh, as per the latest Government Notification, may serve as a guideline. This is just one of the alternatives that the Family Court Judge may consider when assessing a person who claims to be a labourer with no other income sources, among other pleadings.

88. The interim maintenance order shall contain the ingredients of the third proviso to section 125 Cr.P.C. (added by Act 50 of 2001, effective from 24.9.2001), and Uttar Pradesh State Amendments (upto date) in this regard, in plain language so that the respondent could understand the consequences of non-payment of interim maintenance. A table summarizing hearing dates and a brief description of Family Court orders on each date shall also be made part of the order.

89. Both interim and final maintenance orders shall include a table showing the number of orders passed by the Family Court prior to awarding interim and final maintenance, along with brief descriptions of orders passed on each date until the final adjudication of the section 125 Cr.P.C. application. The final maintenance order shall also include a date-wise account of proceedings related to section 125(3) Cr.P.C.

90. In cases involving parties from the Economically Weaker Section, individuals living below the poverty line, or casual labourers, the obligation to submit the Affidavit of Disclosure of Assets and Liabilities would be exempted. The court may demand an EWS/BPL certificate issued by the competent authority, which may be the Office of the Labour Commissioner or the Revenue Authority, as applicable.

91. District Judges shall develop a structural system for regularly assessing and overseeing the performance of family courts within their districts, ensuring the adherence to directives issued by the Supreme Court in Rajnesh Case (supra) and by this Court, in the instant case, this reporting mechanism would serve as a means of accountability, enabling timely interventions by the Constitutional Courts, when necessary. This may encompass routine evaluations, case audits, and feedback mechanisms to gauge the effectiveness and quality of judicial decisions in this context.

92. All District Judges shall convene semi-annual meetings of their respective Family Court Judges to review and evaluate the implementation progress of the guidelines issued by the Supreme Court in Rajnesh Case (supra) and this Court in the instant case. If the guidelines issued to Family Courts are not followed, concerned District Judge shall submit a semi-annual report to the Registrar General of this Court, against the Judicial Officer, who has not complied the guidelines. The Registrar General shall record its finding and present these reports to the respective Administrative Judge of the concerned Judicial Officer for their review and reference. Additionally, a record of these reports shall also be maintained in the service book of the concerned Judicial Officer. The District Judge shall prepare the progress report in the manner as provided in Enclosure-III attached with this judgment.

93. The District Judge along with the Principal Judge, Family Court shall flag the critical issues with respect to service of notice/summons and problems encountered in enforcement of interim maintenance/maintenance orders passed by respective Family Court Judges in the meeting of District Monitoring Committee for Family Courts, and the civil administration shall provide all assistance, as may deem necessary.

94. The District Legal Services Authority, in collaboration and co-operation with the respective District Bar Association, shall arrange awareness and training sessions/ workshops to encourage Bar members to submit pleadings in accordance with Enclosure-I & II.

95. For the sake of convenience, the Enclosures I & II attached to Rajnesh Case (supra) are hereby included as part of this order. Additionally, Enclosure-III is provided for the convenience of all District Judges to prepare the compliance report, in case aforesaid guidelines are not followed.

96. The Registrar (Compliance) of this court shall communicate copy of this judgment to all District Judges for dissemination among all Family Court Judges, and Chief Secretary, Government of Uttar Pradesh to circulate among all District Magistrates and Senior Superintendent of Police, of respective districts. Furthermore, a copy of this judgment shall be published on the websites of all District Courts, Family Courts, and Courts of Judicial Magistrate to facilitate awareness and implementation.

97. The captioned petition stands disposed off in terms of guidelines issued herein above. The Principal Judge, Family Court, Muzaffarnagar shall decide O.S. No.976/11 of 2022 titled as Parul Tyagi Vs. Gaurav Tyagi, in terms of the aforesaid guidelines.

Order Date: 4.8.2023

Anil K. Sharma
(Vinod Diwakar, J.)

ENCLOSURE I

Affidavit of Assets and Liabilities for Non-Agrarian Deponents

I _____, d/o _____ or s/o _____, aged about _____ years, resident of _____, do hereby solemnly affirm and declare as under:

A. Personal Information

1. Name:

2. Age/Sex:

3. Qualifications (Educational and Professional):

4. Whether the Applicant is staying in the matrimonial house / parental home / separate residence. Please provide the current residential address of matrimonial home or place of residence and details of ownership of residence, if owned by other family member.

5. Date of marriage:

6. Date of separation:

7. General monthly expenses of the Applicant (rent, household expenses, medical bills, transportation, etc.):

B. Details of Legal Proceedings and Maintenance being paid

1. Particulars of any ongoing or past legal proceedings with respect to maintenance or child support between the Applicant and Non-Applicant.

2. Whether any maintenance has been awarded in any proceeding arising under the D.V. Act, Cr.P.C., HMA, HAMA, etc.? If yes, provide details of the quantum of maintenance awarded in the proceedings.

3. If so, provide particulars thereof, alongwith a copy of the order(s) passed.

4. Whether the order of maintenance passed in earlier proceedings has been complied with. If not, arrears of maintenance.

5. Whether any voluntary contribution towards maintenance has been made/ will be made in the future? If yes, provide details of the same.

C. Details of dependant family members

1. Details of Dependant family members, if any.

(a) Relationship with dependants:

(b) Age and sex of dependant(s):

2. Disclose if any independent source(s) of income of the dependants, including interest income, assets, pension, tax liability on any such income and any other relevant details.

3. The approximate expenses incurred on account of the dependant.

D. Medical details if any, of the Deponent and/or dependant family members

1. Whether either party or child /children is suffering from any physical / mental disability, or any other serious ailment. If yes, produce medical records.

2. Whether any dependant family member has serious disability, requiring continuous medical expenditure. If yes, produce disability certificate and approximate medical expenditure incurred on such medical treatment.

3. Whether either party or child/children or any other dependent family member is suffering from life-threatening diseases, which would entail expensive and regular medical expenditure? If yes, provide details of the same along with summary of previous details of hospitalisation/medical expenses incurred.

E. Details of Children of the parties

1. Number of children from the existing marriage / marital relationship/ previous marriage

2. Name and age of children

3. Details of the parent who has the custody of the children.

4. Expenditure for maintenance of dependant children.

(a) Towards food, clothing and medical expenses.

(b) Towards expenses for education, and a summary of general expenses.

(c) Towards expenses, if any, of any extra educational, vocational or professional / educational course, specialised training or special skills programme of dependent children.

(d) Details of any loan, mortgage, charge incurred or instalment plan (being paid or payable), if any, on account of any educational expenses of children.

5. Whether any voluntary contribution by either of the parties is being made towards these educational expenses? If yes, provide details of the same. Also provide an estimate of any additional contribution that may be required.

6. Whether any financial support is being provided by a third party for the educational expenses of the children?

F. Details of Income of the Deponent

1. Name of employer:

2. Designation:

3. Monthly income:

4. If engaged in Government Service, furnish latest Salary Certificates or current Pay Slips or proof of deposit in bank account, if being remitted directly by employer.

5. If engaged in the private sector, furnish a certificate provided by the employer stating the designation and gross monthly income of such person, and Form 16 for the relevant period of current employment.

6. If any perquisites, benefits, house rent allowance, travel allowance, dearness allowance or any other service benefit is being provided by the employer during the course of current employment.

7. Whether assessed to income tax?

If yes, submit copies of the Income Tax Returns for the periods given below :

- (i) One year prior to marriage
- (ii) One year prior to separation
- (iii) At the time when the Application for maintenance is filed

8. Income from other sources, such as rent, interest, shares, dividends, capital gains, FDRs, Post office deposits, mutual funds, stocks, debentures, agriculture, or business, if any, alongwith TDS in respect of any such income.

9. Furnish copies of Bank Statement of all accounts for the last 3 years.

G. Assets (movable and immovable) owned by the Deponent

1. Self-acquired property, if any:
2. Properties jointly owned by the parties after marriage:
3. Share in any ancestral property:
4. Other joint properties of the parties (accounts/ investments/ FDR/ mutual funds, stocks, debentures etc.), their value and status of possession:
5. Status of possession of immovable property and details of rent, if leased:
6. Details of loans taken or given by the Deponent
7. Brief description of jewellery and ornaments of parties acquired during /after marriage:
8. Details of transfer deeds or transactions of alienation of properties previously owned by the applicant, executed during the subsistence of the marriage. Also provide brief reasons for such sale or transaction, if any.

H. Details of Liabilities of the Deponent

1. Loans, liabilities, mortgage, or charge outstanding against the Deponent, if any.
2. Details of any EMIs being paid.
3. Date and purpose of taking loan or incurring any such liability:
4. Actual amount borrowed, if any, and the amount paid upto date of filing the Affidavit:
5. Any other information which would be relevant to describe current liabilities of the Deponent.

I. Self-employed persons / Professionals / Business Persons / Entrepreneur

1. Brief description of nature of business/profession/vocation/self-employed/work activity.
2. Whether the business/profession/ self-employment is carried on as an individual, sole proprietorship concern, partnership concern, LLP, company or association of persons, HUF, joint family business or any other form? Give particulars of Applicant's share in the partnership/business/ professional association/selfemployment. In case of partnership, specify the share in the profit/losses of the partnership.
3. Net Income from the business/profession/ partnership/self-employment.
4. Business/partnership/self-employment liabilities, if any, in case of such activity.
5. In case of business of company, provide brief details of last audited balance sheet to indicate profit and loss of the company in which such party is in business in the company.
6. In case of a partnership firm, provide details of the filings of the last Income Tax Return of partnership.
7. In case of self-employed individual, provide the filings of the last Income Tax Return from any such professional/business/vocational activity.

J. Information provided by the Deponent with respect to the income, assets and liabilities of the other Spouse

1. Educational and professional qualifications of the other spouse:
2. Whether spouse is earning? If so, give particulars of the occupation and income of the spouse.
3. If not, whether he/she is staying in his/her own accommodation, or in a rented accommodation or in accommodation provided by employer/business/partnership?
4. Particulars of assets and liabilities of spouse as known to the deponent, alongwith any supporting documents.

K. Details of Applicant or the other Spouse, in case parties are Non-Resident Indians, Overseas Citizens of India, Foreign Nationals or Persons living abroad outside India

1. Details of Citizenship, Nationality and current place of residence, if the Applicant or other spouse is residing abroad outside India, temporarily or permanently.
2. Details of current employment and latest income in foreign currency of such applicant/spouse, duly supported by relevant documentation of employment and income from such foreign employer or overseas institution by way of employment letter or testimonial from foreign employer or overseas institution or latest relevant bank statement.
3. Details of household and other expenditure of such applicant/spouse in foreign jurisdiction.
4. Details of tax liability of applicant/other spouse in foreign jurisdiction.
5. Details of income of applicant/other spouse from other sources in India/foreign jurisdiction.
6. Details of expenses incurred or contribution made on account of spousal maintenance, child support or any other educational expenses, medical treatment of spouse or children.
7. Any other relevant detail of expenses or liabilities, not covered under any of the above headings and any other liabilities to any other dependant family members in India or abroad.

Declaration

1. I declare that I have made a full and accurate disclosure of my income, expenditure, assets and liabilities from all sources. I further declare that I have no assets, income, expenditure and liabilities other than as stated in this affidavit.

2. I undertake to inform this Court immediately with respect to any material change in my employment, assets, income, expenses or any other information included in this affidavit.

3. I understand that any false statement in this affidavit, apart from being contempt of court, may also constitute an offence under Section 199 read with Sections 191 and 193 of the Indian Penal Code punishable with imprisonment upto seven years and fine, and Section 209 of Indian Penal Code punishable with imprisonment upto two years and fine. I have read and understood Sections 191, 193, 199 and 209 of the Indian Penal Code, 1860.

DEPONENT

Verification

Verified at ___ on this ___ day of ___ that the contents of the above affidavit are true to my personal knowledge, no part of it is false and nothing material has been concealed therefrom, whereas the contents of the above affidavit relating to the assets, income and expenditure of my spouse are based on information believed to be true on the basis of record. I further verify that the copies of the documents filed along with the affidavit are the copies of the originals.

DEPONENT

ENCLOSURE II

Details for Affidavit for Agrarian Deponents (Krishi)

1. Total extent of the rural land(s) owned, or the specific share holding in the same land:

2. Jamabandis / Mutations to show ownership.

3. Location of the land owned by the party.

4. Nature of land: whether wet land or dry land.

5. Whether such land is agricultural land or non-agricultural land:

6. Nature of agriculture / horticulture :

7. Nature of crops cultivated during the year :

8. If rural land is not cultivable, whether the same is being used for business, leasing or other activity :

9. Income generated during the past 3 years from the land.

10. Whether any land is taken on lease /battai (or any other term used for a lease in the local area of the jurisdiction concerned where rural /agricultural land is located.)

11. (a) Whether owner of any livestock, such as buffaloes, cows, goats, cattle, poultry, fishery, bee keeping, piggery etc., the number thereof and Income generated therefrom?

(b) Whether engaged in dairy farming, poultry, fish farming or any other livestock activity.

12. Loans, if any obtained against the land. Furnish details of such loans.

13. Any other sources of income :

14. Liabilities, if any.

15. Any other relevant information :

Declaration

1. I declare that I have made a full and accurate disclosure of my income, expenditure, assets and liabilities from all sources. I further declare that I have no assets, income, expenditure and liabilities other than as stated in this affidavit.

2. I undertake to inform this Court immediately with respect to any material change in my employment, assets, income, expenses or any other information included in this affidavit.

3. I understand that any false statement in this affidavit, apart from being contempt of Court, may constitute an offence under Section 199 read with Sections 191 and 193 of the Indian Penal Code punishable with imprisonment upto seven years and fine, and Section 209 of Indian Penal Code punishable with imprisonment upto two years and fine. I have read and understood Sections 191, 193, 199, and 209 of the Indian Penal Code,1860.

DEPONENT

Verification

Verified at ___ on this ___ day of ___ that the contents of the above affidavit are true to my personal knowledge, no part of it is false and nothing material has been concealed therefrom. I further verify that the copies of the documents filed along with the affidavit are the copies of the originals.

DEPONENT

Enclosure-III

Sr. No.

Date of Order

Brief Description of the Court Proceedings

1.

2.

3.

4.

Note by the District Judge:

1. Whether guidelines issued from para 87 to 90 of the judgment, are complied with or not?,
2. If not, mention the details of such guidelines which have not been complied with by the Family Court Judge.
3. Comments, if any in this regard.

*The columns may be added or deleted as per requirement.