

## Indra Vs Bir Singh

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Sept. 19, 2013

**Hon'ble Judges:** Daya Chaudhary, J

**Bench:** Single Bench

**Advocate:** Maninder Arora, for the Appellant; Y.P. Khullar, for the Respondent

**Final Decision:** Allowed

### Judgement

Daya Chaudhary, J.

The wife is petitioner before this Court. She has approached this Court for modification of order dated 3.8.2011

passed by the Family Court, Faridabad whereby maintenance allowance to the tune of Rs. 3,500/- has been granted.

The facts, in brief, are that

the marriage between the petitioner and respondent was solemnized in the year 1978. Earlier to filing of application u/s 127 CrPC, the wife

presented an application u/s 125 CrPC for grant of maintenance allowance. The said application u/s 125 CrPC was allowed. In the revision, the

maintenance allowance of Rs. 2,000/- per month was granted vide order dated 6.7.2007.

2. The petitioner-wife moved an application u/s 127 CrPC for enhancement of an amount of maintenance from Rs. 2,000/- per month which was

granted vide order dated 6.7.2007. The Family Court, Faridabad vide order dated 3.8.2011 has enhanced the maintenance amount from Rs.

2,000/- per month to Rs. 3,500/- per month which is under challenge.

3. Learned counsel for the petitioner argues that amount of maintenance granted by the Family Court is meagre in the light of the fact that the

husband is getting a salary of Rs. 32,760/-, apart from income from other sources, like, agriculture land which has been inherited by him vide Will

dated 3.8.2007. He argues that the petitioner is entitled for maintenance allowance at least 1/3rd of the income from salary. On that basis, it has

been claimed that the petitioner is entitled to amount of maintenance to the tune of Rs. 12,000/- per month from the date of filing of the application.

4. Learned counsel for the respondent-husband submits that the husband is ready to keep the wife with him but it is only the petitioner who is not

residing together as the wife is not being neglected or there was no sufficient reason to reside separately. He further submits that the widow sister

along with children is also residing with him and there is no other source of income and the expenses are to be meted out from the salary which is

approximately Rs. 17,000/- per month after making necessary deduction. heard learned counsel for the parties and have also perused the records

of the case and also the latest salary certificate of salary which has been produced in the Court at the time of hearing.

5. The petitioner is legally wedded wife of the respondent. In the year 2007, the wife was granted maintenance allowance to the tune of Rs.

2,000/- per month. However, the wife being not satisfied with the maintenance allowance moved an application u/s 127 CrPC for enhancement of

maintenance allowance. That application was allowed by increasing the amount of maintenance from Rs. 2,000/- per month to Rs. 3,500/- per

month vide order dated 3.8.2011. The wife is not satisfied with the aforesaid amount of maintenance compelling her to approach this Court

through the present petition.

6. The destitute wife who is no source of income and there being steep rise in the essential commodities is entitled to claim enhanced maintenance

allowance.

7. To answer the aforesaid point, it would be appropriate to examine the facts of the present case.

8. Undoubtedly, the gross salary of the husband is Rs. 32,760/- per month. There are deductions to the tune of Rs. 12,290/- per month. After

deductions, the husband is getting salary to the tune of Rs. 20,740/- per month. However, learned counsel for the husband submits that the salary

slip does not reflect the true picture as there is some more deductions and after that deduction, the husband is getting salary to the tune of Rs.

17,000/- per month, out of which, major part of the salary is to spend for his dependent widow sister and her children. That being the situation, the

Family Court, Faridabad has rightly granted the maintenance allowance to the tune of Rs. 3,500/- per month.

9. The aforesaid narrated version does not help the husband to wriggle out of the obligations to pay the enhanced amount of maintenance. Firstly,

the voice comes from the mouth of the husband that he is to meet the expenses of his widow sister and children, who are dependent, is not

forceful, inasmuch as, the widow sister cannot be considered dependent upon the respondent-husband. The next step for determination is as to

what extent the wife is entitled to maintenance allowance. Although as per salary certificate the husband was drawing gross salary to the tune of Rs.

32,760/- per month and after deduction, he is getting salary of Rs. 20,470/- per month, but still it is stand of the husband that he is getting salary of

Rs. 17,000/- per month which is not justified in the absence of any proof, however, in order to decide the controversy let the salary of husband is

taken to be Rs. 17,000/- per month, then the wife is entitled to 1/3rd of the salary of the husband for her maintenance which comes to Rs. 5,500/-

per month approximately, to be paid from the date of filing of the present petition. Accordingly, the present petition is allowed. The wife is held

entitled to maintenance to the tune of Rs. 5,500/- per month from the date of filing of the petition.