



**224 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR(F)-973-2022 (O & M)
Date of decision: 03.10.2024**

RAJESH KUMAR

...PETITIONER

V/S

SIMRANJIT KAUR

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Deepak Arora, Advocate for the petitioner.

Mr. Mr. P.S. Chahal, Advocate for
Mr. G.S. Nagra, Advocate for the respondent.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been preferred against judgment dated 06.05.2022 passed by learned Additional Principal Judge, Family Court, Camp Court, Batala, District Gurdaspur, vide which, conditional warrants of arrest of the petitioner have been ordered subject to payment of Rs.95,000/- as arrears of maintenance allowance.

2. The marriage between the petitioner and mother of respondent was solemnised on 12.09.2005 at Ludhiana. Out of this wedlock, one female child (respondent herein) was born. However, matrimonial dispute ensued between the couple and respondent filed a petition under Section 125 Cr.P.C. seeking maintenance. The petitioner was proceeded against *ex parte* and the learned Court below vide order dated 13.09.2018 granted maintenance of Rs.5,000/- per month in favour of the respondent, about which, the petitioner was not aware and did not pay the amount of maintenance awarded in favour of respondent, in lieu of which, conditional warrants against him were issued.



Aggrieved by the same, the petitioner has approached this Court by filing the present petition.

3. Learned counsel for the petitioner *inter alia* contends that at the time of the settlement between the petitioner and mother of the respondent on 02.08.2014 (Annexure P-1), it was mutually agreed by both of them that mother of the respondent would take care of her and she will not claim any maintenance in future on this account and she has already taken a lump-sum amount of Rs.3.5 lacs towards her permanent alimony including her dowry articles and once she has undertaken not to claim any maintenance in future, the present proceedings instituted under Section 125 Cr.P.C. are clearly an abuse of the process of law and petitioner cannot be held liable to pay any amount of maintenance to respondent. To substantiate his arguments, learned counsel relies upon the settlement (Annexure P-1) and judgment (Annexure P-2), vide which, the decree of divorce was passed by way of mutual consent between the mother of respondent and the petitioner.

4. *Per contra*, learned counsel for the respondent submits that respondent is minor and she is studying in a school and she is totally dependent upon her maternal grandfather and the petitioner being the biological father of the respondent is duty bound to save her from vagrancy and destitution.

5. I have heard learned counsel for the parties and carefully perused the record with their able assistance. However, for proper adjudication of the present case, it is pertinent to refer to the relevant provisions under Section 125, Cr.P.C., which is extracted below:

Section 125. Orders for maintenance of wives, children and parents.

(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 months 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.

6. The distinction between the mode of enforcing recovery and effecting actual recovery of the amount of maintenance which has fallen in arrears in the context of the provisions under Section 125(3) of Cr.P.C. was discussed in the case of ***Smt. Kuldip Kaur vs. Surinder Singh and anr. (1989) 1 SCC 405***, wherein a two Judge bench of the Hon'ble Supreme Court, speaking through Justice M.P. Thakkar, made the following observations:

*“6. A distinction has to be drawn between a mode of enforcing recovery on the one hand and effecting actual recovery of the amount of monthly allowance which has fallen in arrears on the other. **Sentencing a person to jail is a 'mode of enforcement'. It is not a 'mode of satisfaction' of the liability. The liability can be satisfied only by making actual payment of the arrears.** The whole purpose of sending to jail is to oblige a person liable to pay the monthly allowance who refuses to comply with the order without sufficient cause, to obey the order and to make the payment. The purpose of sending him to jail is not to wipe out the liability which he has refused to discharge. Be it also realised that a person ordered to pay monthly allowance can be sent to jail only if he fails to pay monthly allowance 'without sufficient cause' to comply with the order. It would indeed be strange to hold that a person who 'without reasonable cause' refuses to comply with the order of the Court to maintain his neglected wife or child would be absolved of his liability merely because he prefers to go to jail. Sentence of jail is no substitute for the recovery of the amount of monthly allowance which has fallen in arrears. Monthly allowance is paid in order to enable the wife and child to live by providing with the essential economic wherewithal. Neither the neglected wife nor the neglected child can live without funds for purchasing food and the essential articles to enable them to live. Instead of providing them with the funds, no useful purpose would be served by sending the husband to jail. Sentencing to jail is the means for achieving the end of enforcing the order by recovering the amount of arrears. It is not a mode of discharging liability. The section does not say so. The Parliament in its wisdom has not said so. Commence does not support*



such a construction. From where does the Court draw inspiration for persuading itself that the liability arising under the order for maintenance would stand discharged upon an effort being made to recover it ? The order for monthly allowance can be discharged only upon the monthly allowance being recovered. The liability cannot be taken to have been by sending the person liable to pay the monthly allowance, to jail. At the cost of repetition it may be stated that it is only a mode or method of recovery and not a substitute for recovery. No other view is possible.” (emphasis added)

7. A close scrutiny of Section 125(3) reveals that in case of breach of the order directing payment of maintenance, the Magistrate may issue warrant for levying the amount due in the manner provided for levying fines as prescribed under Section 421 of Cr.P.C. and the Magistrate may also sentence such person for the whole or any part of each month allowance. Both of these are methods to impel the person against whom execution proceedings have been initiated to pay the maintenance amount which has fallen in arrears. However, the employment of these modes of enforcing recovery is not to be confused with the actual realization of the maintenance amount due or as a satisfactory substitute for the latter. The ambit and scope of the powers as devolved by Section 125(3), are not to penalize or punish the transgressing party, who hasn't complied with the order, but rather, to drive him to a situation where he is put under an obligation to pay the monthly allowance and makes the actual payment of arrears. The intent of the legislature in this regard is further made explicit by the provision which allows for sentencing the person, who fails without sufficient cause to comply with the order without sufficient cause, for the whole or any part of each month's allowance for the maintenance, including interim maintenance remaining unpaid. The sentence may extend to imprisonment for a term up to one month or until payment is made, if sooner. The provisions under Chapter IX of Cr.P.C. are in the nature of a beneficent legislation. The purpose and object is to provide a simple and

speedy remedy, and to ensure that the deserted wife, children and parents are not left without any means for subsistence.

8. A perusal of the impugned order passed by the learned Family Court makes it evident that notice issued to the petitioner was duly served and despite the service, he did not appear before the learned Court below. Further, nobody appeared on behalf of the petitioner to communicate whether the petitioner is willing to make the payment of arrears of maintenance. Hence, the conditional warrants were issued against the petitioner. Maintenance proceedings have to be understood in the backdrop of the overarching intent of Chapter IX of Cr.P.C., which is to maintain the neglected spouse and minor children and provide them with sufficient monthly allowance to enable them to lead a life of dignity. Consequently, the averment of the learned counsel for the petitioner that issuance of conditional warrants is unwarranted, does not merit acceptance.

9. Accordingly, the present petition is dismissed being bereft of any merits.

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

October 03, 2024
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(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |