

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

CRM-M-18434 of 2015
Date of Decision: 28.05.2015

JagdishPetitioner
Versus

Vedwanti and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Kanhiya Soni, Advocate
for the petitioner.

SNEH PRASHAR, J.

1. Prayer in this petition filed under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C') is to quash the order dated 11.07.2009 (Annexure P-4) passed by learned Sub Divisional Judicial Magistrate, Meham enhancing maintenance allowance payable to the respondents No.1 and 2 (wife and minor child) of the petitioner; order dated 05.07.2014 passed by Sub Divisional Judicial Magistrate, Meham, declining to recall the attachment order and to stay the execution proceedings; and lastly order dated 22.01.2015 passed by learned Sessions Judge, Rohtak dismissing the revision petition filed by the petitioner.

The respondents filed a petition under Section 125 Cr.P.C praying for direction to the petitioner to pay them maintenance allowance during the pendency of the petition. Learned trial Court granted maintenance to the respondents to tune of Rs.500/- each from the date of petition i.e 08.11.1996 vide order dated 27.07.2000.

Subsequently, the respondents filed an application under Section 127 Cr.P.C praying for enhancement of the maintenance awarded vide order dated 27.07.2000. The petitioner did not appear to contest the petition and by way of order dated 11.07.2009 the maintenance allowance was enhanced to Rs.5,000/- per month i.e., Rs.3,000/- for respondent No.1-wife and Rs.2,000/- for respondent No.2-minor son.

The petitioner then filed an application for setting aside the ex-parte order dated 11.07.2009 but his application was dismissed on 05.07.2014. The petitioner also filed an application for recalling the order of attachment and for stay of the execution proceedings but even that application was dismissed by learned trial Court. Aggrieved by the order, he preferred two separate appeals which were dismissed being not maintainable vide order dated 13.06.2011. Thereafter the revision petition filed by him on 20.08.2014 was dismissed by learned Sessions Judge, Rohtak vide the impugned order dated 22.01.2015.

2. Learned counsel for the petitioner has been heard.

3. It was submitted on behalf of the petitioner that he was prevented by unavoidable circumstances from appearing in the petition for enhancement of the maintenance allowance filed by the respondents. Learned counsel also submitted that the petitioner is a poor person and has no means to pay the amount of Rs.5,000/- as maintenance allowance allowed to the respondents. Otherwise also, respondent No.2 had attained the age of majority in 2009 as his D.O.B is 18.06.1991 and was no longer a dependant of the petitioner.

4. Displaying a glance into the conduct of the petitioner during the litigation, the findings of the learned Sessions Judge in his order dated 22.01.2015 are as under:

No other inference can be drawn from the conduct of the petitioner except that his purpose of moving both the applications was only to prolong the litigation and to avoid the payment of maintenance allowance as directed by the learned Magistrate. It is pertinent to mention here that against the order dated 11.07.2009 passed by Sh. Atul Marya, the then learned Sub Divisional Judicial Magistrate, Meham, whereby the amount of maintenance allowance was enhanced, the petitioner had filed a revision, which was dismissed by Sh. Jagjit Singh, the then learned Additional Sessions Judge, Rohtak, vide order dated 13.06.2011 and his contention that his absence in the proceedings under Section 125 Cr.P.C was not intentional was not accepted. It is also pertinent to mention that the learned Magistrate vide order dated 16.01.2015 has directed the petitioner to be kept in civil imprisonment for a period of 30 days for non-payment of amount of maintenance allowance in

both the petitions.

5. Indeed, the facts noticed above reveal that the only intention of the petitioner has been to avoid payment of maintenance allowance to the respondents by stalling the proceedings using one mode or the other.

6. Learned counsel for the petitioner failed to demonstrate any cogent and genuine reason for absence of the petitioner for enhancement of maintenance allowance filed by the respondents. Moreso, the amount of Rs.5,000/- i.e., Rs.3,000/- for respondent No.1 and Rs.2,000/- for respondent No.2 allowed as maintenance allowance is not on the higher side in view of the fact that the income of the petitioner was assessed as Rs.30,000/- to 40,000/- per month by learned Sub Divisional Judicial Magistrate. Even if he is assumed to be a daily wager his earnings would not be less than 10,000/- per month and in that eventuality also the maintenance fixed is very reasonable.

In case respondent No.2 has gained the age of majority and he is no longer a dependent, the petitioner has remedy to approach the appropriate Court.

Thus, in the above premises, finding no ground for intervention in the orders of Courts below, the present petition is hereby dismissed.

May 28, 2015
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(SNEH PRASHAR)
JUDGE