

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-109-2015

Date of decision: 14.05.2015

Kuldeep Singh

... Petitioner

Vs.

Bhupinder Kaur and others

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. R.K. Rana, Advocate
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

Present one is yet another glaring example wherein the husband, sought to get undue benefit of his dominating position, while trying to avoid payment of maintenance amount to his own wife and children, is bent upon to misuse the process of law, to the maximum.

Instant criminal revision petition is directed against the judgment dated 19.12.2014 passed by learned District Judge (Family Court), Ambala, whereby a clerical error in the order dated 18.07.2012, passed by the same Court, was corrected, clarifying that the husband-petitioner herein, would pay the monthly maintenance amount to his wife and children, from the date of filing of petition under Section 125 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short).

Shorn of unnecessary detailed background of the case, it would suffice to note here that in a petition under Section 125 Cr.P.C. filed by the wife and her two children, respondents herein, before the learned District Judge (Family Court), Ambala, respondent-husband in the said petition under Section 125 Cr.P.C., who is present petitioner, was proceeded ex parte on 19.05.2010 because despite due service, he did not appear in the Court. Ex parte evidence was led. After hearing learned counsel for the wife and children and keeping in view the ex parte evidence brought on record, the learned Family Court came to the conclusion that the husband was liable to pay monthly maintenance amount of Rs.2,000/- to the wife and Rs.1,000/- each to both the children, total being Rs.4,000/- per month. This ex parte judgment was passed on 18.07.2012.

However, in the operative para 10 of the judgment, the learned Family Court, because of sheer inadvertence and bonafide omission on its part, did not mention it as to whether the monthly maintenance amount would be payable either from the date of filing of the petition under Section 125 Cr.P.C. or from the date of judgment. Taking undue benefit of this anomalous situation in the operative part of the judgment dated 18.07.2012, petitioner kept on putting off the payment of monthly maintenance amount to his wife and children, on one pretext or the other.

When the petitioner did not pay any maintenance amount to the respondents, decree-holders, they were left with no other option except to file execution. During the execution proceedings, when the judgment debtor was trying to get undue benefit of the abovesaid alleged ambiguity in the judgment dated 18.07.2012, the decree-holders, respondents herein, were left with no option except to file an application for correction/clarification in the judgment

dated 18.07.2012, regarding the effective date of grant of maintenance. Notice of the said application was issued and the husband-judgment debtor filed his reply opposing the said application, raising more than one technical objections including the limitation etc.

After hearing learned counsel for the parties, the learned Family Court, Ambala, vide impugned order dated 19.12.2014, clarified its judgment dated 18.07.2012, by observing that the husband was bound to pay the monthly maintenance amount to his wife and children, from the date of filing of petition under Section 125 Cr.P.C. Feeling aggrieved against the impugned order dated 19.12.2014, petitioner approached this Court by way of instant criminal revision petition.

Learned counsel for the petitioner submits that after passing of the judgment dated 18.07.2012, the learned Family Court had become functus officio and it had no jurisdiction under Section 362 of Cr.P.C. to carry out any correction/clarification in the judgment dated 18.07.2012, by way of impugned order dated 19.12.2014. He further submits that vested right had accrued in favour of the petitioner, which could not have been taken away. Learned counsel for the petitioner would next contend that since the learned Family Court had exceeded its jurisdiction, while passing the impugned order dated 19.12.2014, the same has resulted in miscarriage of justice, hence not sustainable in law. In support of his arguments, learned counsel for the petitioner places reliance on a judgment of the Hon'ble Supreme Court in **Hari Singh Mann Vs. Harbhajan Singh Bajwa, 2001 (1) SCC 169** and a judgment of this Court in **Hans Raj Vs. State of Haryana, 2011 (1) PLR 585**. He prays for allowing the present petition, by setting aside the impugned order.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in view of peculiar fact situation of the present case noticed hereinabove, instant one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its revisional jurisdiction, which itself is a limited one. To say so, reasons are more than one, which are being recorded hereinafter.

It has gone undisputed on record that petitioner was proceeded ex parte in the petition under Section 125 Cr.P.C., filed by the respondent-wife and children, seeking monthly maintenance from the petitioner. He was duly served but despite service, he did not appear and accordingly, was proceeded ex parte vide order dated 19.05.2010. Ex parte evidence was led. Thereafter, after hearing the ex parte arguments and going through the evidence brought on record, learned District Judge (Family Court), Ambala came to the conclusion that the husband was liable to pay monthly maintenance amount of Rs.2,000/- to the wife and Rs.1,000/- each to both the children, total being Rs.4,000/- per month, besides litigation expenses of Rs.1,100/-.

However, because of an accidental slip, a clerical error, apparent on the face of it, came to be occasioned in the operative part of the judgment dated 18.07.2012. Operative Para 10 of the judgment dated 18.07.2012, passed by the learned Family Court, Ambala, reads as under: -

“In view of the observations made above, the petition is allowed with costs. Respondent is directed to pay the amount of Rs.4000/- towards litigation expenses to the petitioners i.e. Rs.2000/- to the

petitioner No.1 and Rs.1000/- each to petitioners No.2 and 3, besides litigation expenses of Rs.1100/-. Memo of costs be prepared accordingly. File be consigned to the record room after due compliance.”

A bare reading of the abovesaid operative part of the judgment dated 18.07.2012 would show that because of a clerical error, effective date of judgment could not be mentioned in the abovesaid operative part of the judgment, as to whether it would be effective from the date of filing of the petition under Section 125 Cr.P.C. or it would be from the date of judgment. In this regard, the judgment was silent, which was an apparent accidental slip or omission at the hands of the Court. Under no circumstances, it can be said to be more than a clerical error and that too, apparent on the face of it.

The abovesaid clerical error was so apparent that no argument was required to point it out. Once such a clerical mistake comes to the notice of the Court, the Court would have the jurisdiction to correct such a clerical error, even on its own motion and no application seeking any such clarification or correction from the aggrieved party would be required. It is so said because the order has to be implemented, in its true letter and spirit, as intended by the Court. In such a situation, there would be no scope of causing any prejudice to the party, opposing such a correction. Having said that, this Court feels no hesitation to conclude that learned District Judge (Family Court) did not commit any error of law, while passing the impugned order and the same deserves to be upheld.

The abovesaid view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in **Master Construction Co. (P)**

Ltd. Vs. State of Orissa and another, AIR 1966 (SC) 1047 and Smt. Sooraj Devi Vs. Pyare Lal and another, AIR 1981 (SC) 736, a Division Bench judgment of the Rajasthan High Court in **Bhala Ram Vs. State of Rajasthan, 2006 (5) WLC (Raj.) 37**, judgment of Bombay High Court in **Kamalabai Khanderao Thete and another Vs. Khanderao Murlidhar Thete and another, 1990 (3) RCR (CrI.) 103**, judgment of Madras High Court in **Gnanaselvi and others Vs. Illavarasan, 1999 (1) Crimes 22** and this High Court in **Prabhpreet Kaur and another Vs. Atamjeet Singh, 2014 (1) RCR (CrI.) 689**.

An identical issue fell for consideration before the Division Bench of Rajasthan High Court in **Bhala Ram's case (supra)**, wherein in Paras 4 to 7 of the judgment, the Division Bench, while following the law laid down in the abovesaid two judgments of the Hon'ble Supreme Court, held as under: -

“Section 362 of the Code of Criminal Procedure, 1973 provides as under :-

"Court not to alter judgment-Save as otherwise provided by this Code or by other law for the time being in force, no court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error." (Emphasis supplied)

*Explaining the scope of Section 362 of the Code of Criminal Procedure, their Lordships of Supreme Court in **Smt. Sooraj Devi v. Pyare Lal (AIR 1981 SC 736)** indicated in para 4 as under: -*

"A clerical or arithmetical error is an error occasioned by an accidental slip or omission of this Court. It represents that which the court never intended to say. It is an error apparent on the face of the record and does not depend for its discovery on argument or disputation. An arithmetical error is a mistake of calculation, and a clerical error is a mistake in writing or typing.

(Emphasis supplied)

In Master Construction Co. (P) Ltd. v. State of Orissa (AIR 1966 SC 1047), their Lordships of the Supreme Court defined accidental slip or omission thus :-

"....The accidental slip or omission is an accidental slip or omission made by the court. The obvious instance is a slip or omission to embody in the order something which the court in fact ordered to be done. This something described as a decretal order not being in accordance with the judgment. But the slip or omission may be attributed to the judge himself. He may say something or omit to say something which he did not intended to say or omit. This is described as a slip or omission in the judgment itself.....

Obviously the error noticed by us is a clerical error occasioned by an accidental slip which the court never intended to say. It is an error apparent on the face of record and does not depend for its discovery on argument or disputation and it can be

corrected in view of section 362 of Cr.PC. Learned counsel for the appellant and learned Public Prosecutor after reading the judgment submitted that since it was a typing mistake it can be corrected.”

Similarly, in a case under Section 125 Cr.P.C., it was held by the Bombay High Court that the wife and children, as a normal rule, should be granted maintenance from the date of application and not from the date of order, unless in exceptional case and for valid reasons. The relevant observations made by Bombay High Court in Para 10 of its judgment in **Kamalabai Khanderao Thete's case (supra)**, which can be gainfully followed in the present case, read as under: -

“This takes me to the other question whether the learned Magistrate was justified in not granting maintenance to the daughter from the date of the application. The learned Magistrate came to the conclusion that respondent No. 1 was not responsible for the delay in deciding the matter and that, therefore, by necessary implication, it means that he was not obliged to maintain her during the pendency of the application. The learned Magistrate forgot, to take note of the fact that during this period when the proceeding was delayed respondent No. 1 did not pay anything to her. She was equally faultless, as she too was not responsible for the delay. The normal rule is to grant maintenance from the date of the application and not from the date of the order. It is only when there are very exceptional circumstances, for valid reasons, it is open to a Magistrate to grant maintenance

with effect from a subsequent date.”

Similar were the observations made by the Madras High Court in **Gnanaselvi's case (supra)** and this Court in **Prabhpreet Kaur's case (supra)**.

Coming to the judgments relied upon by learned counsel for the petitioner, there is no dispute about the law laid down therein. However, on close perusal of the cited judgments, none of them has been found of any help to the petitioner, being distinguishable on facts. Further, it is the settled proposition of law that peculiar facts of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533**.

Reverting back to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court as well different High Courts, in the cases referred to hereinabove, it is unhesitatingly held that since the error in the judgment dated 18.07.2012 was clearly falling within the scope of a “clerical error”, the learned Family Court, Ambala was well-justified in carrying out the correction of said clerical mistake, while passing the impugned order dated 19.12.2014 and the same deserves to be upheld, for this reason also.

It is also pertinent to note here that the petitioner neither sought setting aside the ex parte proceedings which were taken against him, vide order dated 19.05.2010 nor he ever challenged the validity of the judgment dated 18.07.2012, passed by the learned Family Court, Ambala. Further, petitioner

kept on avoiding his legal as well as moral obligation towards his own wife and children, while not paying the monthly maintenance amount to them, despite the abovesaid judgment dated 18.07.2012 having become final against him.

On the other hand, petitioner-husband was making every possible efforts to avoid the execution of the judgment dated 18.07.2012, as if he was not governed by the law of the land. Petitioner, in such a situation, cannot be permitted to draw any kind of benefit out of his own wrong. It is so said because petitioner was not going to oblige any stranger. He would have been paying the monthly maintenance amount to his own wife and children which was essentially required by them for their subsistence. Under these circumstances, it can be safely concluded that neither the law nor equity is in favour of the petitioner. On the other hand, it is clearly in favour of the respondents. Thus, the impugned order deserves to be upheld, for this reason also.

During the course of hearing, learned counsel for the petitioner could not point out any jurisdictional error or patent illegality apparent on the record of the case, in the impugned order passed by learned Family Court, so as to convince this Court to take a different view than the one taken by the learned District Judge (Family Court), Ambala. Further, learned counsel for the petitioner could not point out any exceptional circumstance or compelling reasons, which may justify the payment of monthly maintenance amount to the respondents from the date of judgment i.e. 18.07.2012, instead of date of filing of the petition under Section 125 Cr.P.C.

In the absence of any such exceptional circumstance or compelling reasons, normal rule has to be followed that the petitioners in the

petition under Section 125 Cr.P.C., would be entitled for the monthly maintenance from the date of filing of the petition and not from the date of judgment thereon. In the interregnum, if the arrears of maintenance had become due, it is only because of fault on the part of the petitioner.

In this regard, he cannot blame anybody else except himself. Since the impugned order has not been found to be suffering from any illegality, much less patent illegality, the same deserves to be upheld so as to do substantial justice, scale of which undoubtedly tilts in favour of the deserving and needy, i.e. respondent wife and children and not in favour of a dishonest and greedy litigant, like the petitioner husband in the present case.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference, at the hands of this Court, is made out.

Resultantly, with the abovesaid observations made, present petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

14.05.2015
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