

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

CRR No. 58 of 2015 (O&M)

Date of decision: 31.03.2015

Meer Singh

..... Petitioner.

Versus

Poonam

..... Respondent.

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present:- Mr. Bhupender Pratap Singh, Advocate, for the petitioner.

NAVITA SINGH, J. (ORAL)

Respondent is personally served, as per report submitted by counsel for the petitioner on the dasti process taken by him in compliance with the order passed on the last date. The respondent signed and put her name and mobile number on the notice. However, no one has appeared for her.

The petitioner was directed to pay an amount of Rs.3,000/- per month to the respondent by the District Judge, Family Court, Gurgaon, where the petition was heard and decided *ex parte* against the petitioner.

It is submitted by counsel for the petitioner that an application already stands filed before the Court concerned for setting aside the *ex parte* order.

Vide impugned order, the petitioner was directed to undergo imprisonment for ten months on account of non-payment of the amount of maintenance due to the respondent.

Despite notice no one appeared for the respondent as observed

above. A reading of the relevant provision of law under sub-section (3) of Section 125 of the Code of Criminal Procedure shows that for whole or any part of allowance for maintenance or interim maintenance in execution of proceedings as the case may be, the Magistrate is empowered to pass an order of imprisonment for a term which may extend to one month or until payment if sooner made. The words 'if sooner made' and the words 'imprisonment for a term which may extend to one month' show that the intention of the legislature was to award imprisonment for one month for each default and not until payment was made.

In any case, the petitioner has already spent one day more than two months in custody as he was sent to prison on 30.01.2015.

Also, counsel for the petitioner referred to the medical slip of the petitioner, who had undergone surgery due to urethral stricture. In August, 2014, he was to undergo second stage of urethroplasty.

In view of the relevant provision of law as mentioned above and in view of the medical condition of the petitioner, the petition is allowed and it is felt that the petitioner has already undergone sufficient custody for the default. In the peculiar circumstances, the sentence of the petitioner is reduced to the period already undergone by him and he is ordered to be released forthwith if not wanted in any other case.

Disposed of accordingly.

(NAVITA SINGH)
JUDGE

31.03.2015
Ramesh