

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

(214-A)

CRR (F)-125-2015

Decided on: February 08, 2016.

Yogesh

.... Petitioner

Versus

Babita

..... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

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

Mr. Atul Yadav, Advocate, for the respondent.

M.M.S. BEDI, J (ORAL)

This is a revision petition questioning the legality and propriety of order dated 20.03.2015 Annexure P-1 by virtue of which he has been summoned through conditional warrant of arrest in execution proceedings qua order dated 25.08.2014 passed in proceedings under Section 125 Cr.P.C. The petitioner-husband and respondent-wife vide joint statement dated 25.08.2014 had agreed to stay together, requiring the petitioner to pay a sum of Rs.5,000/- per month from the date when she was constrained to leave the matrimonial home. Copy of order dated 25.08.2014 has been placed on record as Annexure P-2.

In order to execute the order dated 25.08.2014, respondent Babita filed execution application for recovery of the amount agreed to between the parties on the petitioner committing default of the undertaking. The trial Court has issued conditional warrants of arrest of the petitioner for requiring him to pay the amount.

Learned counsel for the petitioner has submitted that the order which is sought to be executed is not executable as the wife herself has opted not to stay with the petitioner after the order dated 25.08.2014 was passed.

Learned counsel for the respondent-wife has submitted that she has been ready to stay with the petitioner but he did not permit her to stay with him on account of which she was not in a position to resume co-habitation with the petitioner.

After hearing learned counsel for the petitioner and learned counsel for the respondent, it appears that the parties are not residing together but at the same time it is also apparent that none of the parties has made any attempt to seek the revival of the proceedings under Section 125 Cr.P.C for adjudication on merits. The petitioner-husband has also not till date filed any application before the Family Court, Gurgaon informing the Court that on account of non-compliance of the undertaking by the wife, he is not bound to pay sum of Rs.5,000/- per month from the date when the wife is constrained to leave the matrimonial home.

In view of said peculiar circumstances, there is no illegality in order dated 20.03.2015 issuing conditional warrants of arrest against the petitioner. No application or protest petition was filed before the Family Court by the petitioner in this respect.

In view of the bona fide of the petitioner being lacking, no interference is warranted in order dated 20.03.2015. The only indulgence which can be shown to the petitioner is that in case the petitioner deposits the entire arrears calculated @ Rs.5,000/- per month without prejudice to

his right to contest the proceedings under Section 125 Cr.P.C, arrest of the petitioner will not be effected and no coercive means would be adopted against him for recovery of the amount. This petition is disposed of accordingly with a direction that the petitioner and respondent will appear before the Family Court on 29.02.2016. The petitioner will pay the entire arrears calculated @ Rs.5,000/- per month for the period from 08.08.2013, the date of institution of the petition under Section 125 Cr.P.C till 20.03.2015 after adjusting sum of Rs.1,000/- per month which he is stated to have been paid in the proceedings under Prevention of Women from Domestic Violence Act. It will be open to the petitioner to move an application for recalling order dated 25.08.2014 on the basis of subsequent events. It will be open to the Family Court to revive the proceedings under Section 125 Cr.P.C for adjudication in accordance with law. The interim maintenance or any other amount to be paid by the petitioner could be further adjudicated irrespective of order dated 20.03.2015 as the petitioner is bound to fulfill his undertaking for payment of the amount determined vide order dated 25.08.2014 till 20.03.2015 from the date of application under Section 125 Cr.P.C.

The operation of order dated 20.03.2015 will remain inoperative till 29.02.2016 subject to petitioner paying entire arrears @ Rs.5,000/- per month as agreed to, subject to decision taken in the application for revival of the proceeding under Section 125 Cr.P.C.

(M.M.S. BEDI)
JUDGE

February 08, 2016
harsha