

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

CRM-M-22988-2017 (O&M)

Date of decision: 02.08.2017

Sanjiv Kumar

...Petitioner

Versus

Sukhvir Kaur

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

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

JAISHREE THAKUR, J. (ORAL)

CRM-23810-2017

Criminal miscellaneous application is allowed as prayed for.

Zimini orders Annexure P-5 are taken on the record.

CRM-M-22988-2017

1. The instant petition has been filed for quashing of the order dated 23.05.2017 whereby conditional warrants have been issued against the petitioner and to challenge the order dated 23.05.2013 vide which interim maintenance has been increased.

2. In brief, the facts are that the respondent wife filed an application under Section 125 Cr.P.C. for grant of maintenance from the petitioner husband. She claimed that she has no source of income to maintain herself and claimed maintenance @ Rs. 10,000/- per month. Upon notice, the petitioner herein put in appearance and filed a detailed reply denying the averments on merits and contended that the respondent herself left the matrimonial home. The Chief Judicial Magistrate, Mansa allowed

the maintenance @ Rs 4,000/- per month to the applicant-wife by order dated 21.07.2012. Aggrieved against the said order, the respondent husband preferred a revision against fixing of Rs. 4,000/- per month as maintenance before the Additional Sessions Judge, Mansa, who after hearing the matter enhanced the amount to Rs. 5,000/- per month by order dated 23.05.2013. Since the amount as assessed was not deposited, the respondent-wife Sukhvir Kaur filed an application for recovery of the maintenance amount before the Chief Judicial Magistrate, Mansa to which objections/reply has been filed which is Annexure P-3 on the record. As per the reply filed, the petitioner herein claimed to have paid an amount of Rs. 42,000/- upto 08.05.2012 and an amount of Rs. 66,000/- upto 30.01.2013. The matter was listed on several occasions before the Chief Judicial Magistrate, Mansa for considering the objections. An amount of Rs. 10,000/- was paid on 09.06.2015 in the Court itself. Another amount of Rs. 5,000/- was paid on 06.04.2017 and the matter was adjourned to 09.05.2017, on which date the case was adjourned to 23.05.2017 for filing complete particulars of balance payment. On 23.05.2017, neither payment was made nor did the respondent or his counsel appear in the Court, on which date conditional warrants against the petitioner have been issued. Aggrieved against this order and the order dated 23.05.2013 by which an amount of Rs. 5,000/- has been assessed as maintenance, the instant petition has been filed.

3. Learned counsel for the petitioner argues that the order dated 23.05.2017 is not sustainable on account of the fact that the matter was listed for the applicant-wife to furnish details of the balance amount to be paid to the applicant-wife, as well as during the pendency of the execution

application an amount of Rs. 15,000/- had been paid by an order dated 09.05.2017, the case had been adjourned for the applicant to give complete particulars of the payment to be paid which details were not furnished. In any case, learned counsel for the petitioner prays that he is ready and willing to make balance payment as per the application filed on reconciliation of the balance amount.

4. I have heard learned counsel for the petitioner and propose to dispose of this petition in limine without issuing notice.

5. A perusal of the zimini orders placed on the record by way of CRM-23810-2017 would reflect that the matter had been adjourned on several occasions for decision of the objections filed. It is also noted that the case had been adjourned to 23.05.2017 for filing of the complete particulars of the balance payment which particulars do not seem to have been furnished by the applicant wife, therefore, in the absence of any decision on the objections filed or without assessing the amount due to be paid by the petitioner, the conditional warrants of arrest ought not to have been issued. Therefore, this Court has no hesitation in setting aside the order dated 23.05.2017. Ordered accordingly.

6. Therefore, the matter is remanded back to the Chief Judicial Magistrate, Mansa for decision to be taken on the objections/reply filed by the petitioner as to the exact amount that has to be paid by the petitioner to the respondent-wife by taking into consideration the amount already paid. That reconsideration be taken as expeditiously as possible.

7. As far as the challenge that has been made to the order dated 23.05.2013, this Court is not inclined to interfere in the matter as there is an

inordinate delay of almost four years in challenging the same and that too without filing any application under Section 5 of the Limitation Act.

8. The order dated 23.05.2017 is hereby set aside and the instant petition stands disposed of with a direction to the Executing Court to first assess the amount after reconciliation of the amounts. The petitioner would then deposit the amount within a period of eight weeks.

02.08.2017

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.