

CRM-M- 2441 of 2015

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In the High Court of Punjab and Haryana at Chandigarh

CRM-M- 2441 of 2015

Date of Decision:18.5.2017

Shankh Lata alias Simranjit Kaur and another

---Petitioners

vs.

Jarnail Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Vipin Mahajan, Advocate
for the petitioners

None for the respondent

Rekha Mittal, J.

The present petition directs challenge against order dated 4.6.2014 passed by the Sub Divisional Judicial Magistrate, Batala whereby application filed by the petitioners for recovery of maintenance due from the respondent has been dismissed.

Counsel for the petitioners has submitted that the petitioners claimed maintenance from Jarnail Singh-respondent who is working with Punjab Police as a Head Constable. Application under Section 125 of the Code of Criminal Procedure (in short "Cr.P.C.") filed by the wife and minor child born out of wedlock of the parties was allowed by the Judicial Magistrate Ist Class, Batala vide order dated 24.4.1999 and the petitioners were awarded maintenance at the rate of Rs. 500/- per month each. The

respondent paid maintenance upto 1.9.2002 and thereafter he became defaulter. The petitioners filed an application dated 30.3.2005 for recovery of maintenance outstanding against the respondent. The application remained pending till 2014. During pendency of the execution proceedings, the petitioners filed application dated 29.3.2014 (Annexure P-5) seeking direction to the respondent to pay up-to-date maintenance to the tune of Rs. 77,000/- that became due and payable during pendency of the execution proceedings. The respondent paid an amount of Rs. 31,000/- towards arrears of maintenance claimed in the execution proceedings vide application dated 30.3.2005 (Annexure P-2). It is argued with vehemence that as the petitioners could claim the arrears of maintenance that fell due during pendency of the execution proceedings, there was no reason for them to file separate execution application for recovery of those arrears, therefore, order passed by the Executing Court dismissing plea of the petitioners for recovery of arrears of Rs, 77,000/- cannot be allowed to sustain and liable to be set aside. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court of India *Shantha @ Ushadevi and another vs. B.G.Shivananjappa 2005(2) RCR(Criminal) 796* and *Poongodi and another vs. Thangavel 2013(4) RCR (Criminal) 504*.

I have heard counsel for the petitioners and perused the paper book.

Notice of motion order passed on 23.1.2015 reads as follows:-

“It appears that the learned Magistrate in exercise of powers to execute the order of maintenance under

Section 125 Cr.P.C., filed in the year 2005 has disposed of the same presuming that to be an old case in her list on 09.6.2014 ignoring the fact that for 9 years the respondent a police official could not be served as his place of posting was not known to the petitioner.

On payment of a sum of Rs.31,000/- towards maintenance for the period 1.2.2014 to 7.3.2014, the execution application has been disposed of being fully satisfied.

The order on the face of it is not sustainable and is an abuse of process of the Court. The right of the petitioner for entire arrears of maintenance cannot be defeated with the lapse of time.

Notice be issued to the respondent at the address given in the memo of parties and at the address of his posting at Kasauli, for 19.3.2015.”

The respondent caused appearance through a counsel and sought time to file reply vide order dated 12.10.2015. He was directed to clear all the arrears before the next date of hearing. Same order was passed on 17.11.2015. Neither the respondent nor counsel on his behalf appeared before the Court after 12.10.2015. The Court ordered for issuance of bailable warrants to be served through the Director General of Police, Punjab. The respondent caused appearance through his earlier counsel but sought time to seek instructions. On 29.7.2016, respondent was directed to clear the arrears of maintenance before the next date of hearing failing which he was directed to be present in the Court on the next date of hearing. The respondent did not cause appearance on the adjourned date and case was fixed for arguments.

The respondent is a member of disciplined force and he played

hide and seek in the proceedings before the Court. Admittedly, the respondent paid an amount of Rs. 31,000/- claimed as arrears of maintenance vide application dated 30.3.2005(Annexure P-2). It was never disputed before the Executing Court that during pendency of the application for execution, arrears of maintenance accumulated for another 77 months amounting to Rs. 77,000/-

Hon'ble the Supreme Court of India in *Shantha @ Ushadevi and another 's case (supra)* has held in para 8, reads as follows:-

“We are, therefore, of the view that in the peculiar circumstances of the case, the bar under Section 125(3) cannot be applied and the High Court has erred in reversing the order of Sessions Judge. It must be borne in mind that Section 125 Criminal Procedure Code is a measure of social legislation and it has to be construed liberally for the welfare and benefit of the wife and daughter. It is unreasonable to insist on filing successive applications when the liability to pay the maintenance as per the order passed under Section 125(1) is a continuing liability.”

In the case at hand, application for payment of arrears of maintenance filed in the year 2005 remained pending till 2014. It is surprising rather shocking that the court below could not ensure payment of arrears by the respondent despite the fact that the respondent is working in the Police Department of State of Punjab. During pendency of proceedings before the Court, arrears of another 77 months at the rate of Rs. 1,000/- per

month became due and an application in this regard was filed by the petitioners including minor son of the parties. If order passed by the Executing court is allowed to sustain, the respondent who is hell-bent to deny maintenance to the petitioners would be exonerated of his legal liability and it would amount to virtually putting a premium over his unwarranted conduct noticed hereinbefore. In view of enunciation laid down by Hon'ble the Supreme Court of India coupled with that order passed by the court below has caused a serious prejudice to the minor child of the respondent, the impugned order cannot be allowed to sustain and liable to be set aside.

For the foregoing reasons, the petition is allowed, impugned order is set aside and the proceedings filed before the Sub Divisional Judicial Magistrate, Batala are restored for the purpose of recovery of arrears of maintenance that became due during pendency of the proceedings. As the matter pertaining to the year 2005 has been restored to the Board of the Executing Court, the court would put its best efforts to expedite recovery of arrears of maintenance, may be by attachment of salary of the respondent through the office of the Director General of Police, Punjab

(Rekha Mittal)
Judge

18.5.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No