

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

CRM-M No.12116 of 2015

DATE OF DECISION :- August 28, 2018

Harshit Kumar

...Petitioner

Versus

Pardeep Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE H.S. MADAN

Present:- Mr. B.K. Bagri, Advocate for the petitioner.

This petition under Sections 482 Cr.P.C. for setting aside judgment dated 4.12.2014 passed by Additional Sessions Judge, Rewari vide which the revision petition filed by the respondent against the order dated 1.9.2012 passed by Judicial Magistrate Ist Class, Rewari dismissing the objections of respondent against the execution petition for recovery of maintenance of Rs.2000/- per month, was dismissed and conditional warrant of arrest against respondent JD issued, has been filed by petitioner Harshit Kumar minor son of Pardeep Kumar against his father Pardeep Kumar.

Briefly stated the facts of the case are that Mrs. Neelam estranged wife and master Harshit Kumar minor son of Pardeep Kumar had filed an application under Section 125 Cr.P.C. against latter, which after contest was partly allowed, inasmuch as an amount of Rs.2000/- per month was awarded to petitioner no. 2 from the date of filing of petition, whereas the prayer of petitioner no. 1 for grant of maintenance was declined. Harshit

Kumar minor petitioner had filed an application under Section 125(3) Cr.P.C. for recovery of arrears of maintenance amounting to Rs.83750/-, notice of which was given to respondent. As agreed between the parties respondent was directed to deposit amount of Rs.30,000/- in the bank account of petitioner within one month along with two months maintenance amount, which was due with a further direction that thereafter he would keep on depositing the amount of maintenance till 10th day of every month in the bank account of the petitioner. The execution petition was dismissed as fully satisfied. Subsequently the petitioner has moved an application under Section 125(3) Cr.P.C., notice of which was given to respondent. On such application following order was passed :-

“Hence, the aforesaid objections are hereby dismissed. Now conditional warrant of arrest against JD be issued for 01.12.2012.”

Feeling aggrieved against the said order Pardeep Kumar had filed a revision petition, which was accepted and learned Additional Sessions Judge, Rewari vide order dated 4.12.2014 held that order dated 1.9.2012 passed by Judicial Magistrate Ist Class, Rewari is not sustainable in the eyes of law, the same was set aside and conditional warrants issued against the respondent vide order dated 1.9.2012, were ordered to be recalled. Minor petitioner Harshit Kumar is aggrieved by this order and he has filed the present petition.

I have heard learned counsel for the petitioner besides going through the record.

Admittedly, monthly maintenance at the rate of Rs.2,000/- has

been awarded to minor petitioner Harshit Kumar payable by his father Pardeep Kumar. If the maintenance is not paid regularly and respondent comes under arrears of maintenance, then Harshit Kumar has got a remedy of getting the due amount recovered by filing an application under Section 125(3) Cr.P.C. before Judicial Magistrate Ist Class, Rewari having jurisdiction. Vide order dated 1.9.2012 learned JMIC, Rewari has come to the conclusion that heavy amount on account of arrears of maintenance was due; That objections raised by JD were not maintainable as such were dismissed and conditional warrants of arrest against JD was issued for 1.12.2012. However, learned Additional Sessions Judge while disposing of the revision petition found otherwise and set aside the impugned order passed by JMIC, Rewari.

It is a matter of mathematical calculations as to whether any amount remains to be paid by respondent to the petitioner which exercise is to be carried out by the trial Magistrate with assistance of both the parties/their counsel. In case respondent shows adamant attitude in making the payment of maintenance amount to his minor son Harshit Kumar, then the same can be got recovered from him by adopting procedure under Section 125(3) Cr.P.C. including issuing conditional warrant of arrest against Pardeep Kumar. This Court while exercising powers under Section 482 Cr.P.C. is not to carry out such calculations and then to examine the legality of the orders passed by the Courts below. Therefore, the present petition is disposed of with the observations that in case petitioner Harshit Kumar is of the view that the monthly maintenance allowance has not been paid to him upto date by his father Pardeep Kumar, who is respondent in the

present petition then he can file an application under Section 125(3) Cr.P.C. before JMIC, Rewari, who after issuance of notice to the respondent asking the parties to furnish the calculations and documents in their possession in support of their contentions, can come to the conclusion as to whether respondent is in arrears of maintenance, if so, direct the respondent to make the payment within a fixed time and if he does not do so to get the recovery effected by adopting procedure under Section 125(3) Cr.P.C.

(H.S. MADAAN)
JUDGE

August 28, 2018
p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No