

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 26.11.2018

1. CRM-M-20454-2016

Davinder Singh

...Petitioner

Versus

Tanya

...Respondent

2. CRM-M-20432-2016

Davinder Singh

...Petitioner

Versus

Nirmal Kaur

...Respondent

3. CRM-M-42390-2018

Davinder Singh

...Petitioner

Versus

Tanya

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Hari Om Sharma, Advocate,
for the petitioner.

Mr.Rohan Mittal, Legal Aid Counsel,
for the respondent in CRM-M-20432-2016.

Mr. Rajender Halwa, Advocate,
for the respondent in CRM-M-42390-2016 &
CRM-M-20454-2016.

JAISHREE THAKUR, J.

1. By this common order, this Court proposes to dispose of the above referred three petitions. For brevity facts are being taken from CRM-M-20454-2016.

2. This is a petition that has been filed under Section 482 Cr.P.C. praying for quashing the order dated 25.01.2016 (Annexure P-3) passed by Addl. Sessions Judge, Panchkula and the order dated 19.08.2015 (Annexure P-1) passed by Chief Judicial Magistrate, Panchkula along with all consequential proceedings thereon.

3. In brief, the facts are that a petition under Section 125 Cr.P.C. was allowed and since regular payment was not being made the decree holder (hereinafter referred to as DH) filed an application under Section 125 (3) Cr.P.C. for execution of the said judgment dated 14.01.2011. During the pendency of the execution proceedings a compromise was arrived at between the petitioner herein the judgment debtor (hereinafter referred to as JD) and the DH on 19.04.2012, on the basis of which the Chief Judicial Magistrate, Panchkula disposed of the execution application on 19.05.2012. Since terms of the compromise were not being adhered to, another execution application i.e. Case No. 79 of 2014 was instituted on 13.11.2014 to which objections were filed.

4. Learned counsel appearing on behalf of the objector/petitioner/JD argued that a compromise had been arrived at on 19.04.2012 and the DH had also obtained attachment of the property of the JD and, therefore, cannot claim maintenance amount twice. This argument was countered by the counsel for the DH by arguing that no amount had

been received by the DH despite order of attachment of property and, therefore, conditional warrants of arrest should be issued against the JD. The Judicial Magistrate Ist Class issued conditional warrants of arrest for an amount of ₹ 72,000/- till 06.10.2015 by holding that the property of the JD had been attached in some other case and that would have no bearing on the execution proceedings. The revision against the order also dismissed, which led to the filing of the instant petitions.

5. Learned counsel appearing on behalf of the petitioner herein contends that the property of the petitioner has already been attached in a civil decree and, therefore, the respondents-herein are not entitled to claim maintenance twice over.

6. I have heard learned counsel for the parties and have perused the pleadings of the case.

7. A contention has been raised by learned counsel for the petitioner that a compromise had been arrived at between the parties and in term of the compromise, the expenses for education and marriage of both the children would be born by the petitioner and if a compromise has been arrived at, independent proceedings under the execution application could not be sustainable. It is further argued that the property stands attached and the petitioner herein would transfer the land in the name of the DHs in order to absolve himself of the debt.

8. Per contra, learned counsel appearing on behalf of the DHs contended that the property of the JD has been attached in some other case and maintenance amount has not been paid to date and, therefore,

conditional warrants of arrest that were issued against the JD for an amount of ₹ 72,000/- payable up till 06.10.2015 had rightly been issued. It is also contended that subsequent to the said order, further amounts have become due and recently on 14.09.2018 Addl. Civil Judge (Sr.Divn.), Panchkula has again issued conditional warrants of arrest through the Collector authorizing him to realise an amount of ₹ 1,80,000/- as arrears of land revenue from movable/ immovable property of defaulter i.e. JD in one case pertaining to the minor daughter and ₹ 1,20,000/- in another case pertaining to the respondent Nirmal Kaur.

9. Admittedly, the respondent herein and her children respondents in other two petitions were held entitled for maintenance of ₹ 8,000/- per month along with interest. In civil suit that had been filed seeking declaration that the respondents' would be entitled to maintenance, the land of the petitioner was attached. A question had rightly been framed by the Addl. Sessions Judge, Panchkula whether by dint of compromise dated 19.04.2012 and/ or attachment of the property by dint of order dated 10.11.2014 passed by Civil Judge (JD), Panchkula would the petitioner herein be discharged from his liability of making payment of maintenance to the respondent-wife and the children and the answer was in the negative. The Addl. Sessions Judge, Panchkula took note of the fact that the petitioner herein had not made payment either pursuant to the compromise arrived at or attachment of the property by an order dated 10.11.2014. It was further held that the petitioner would be entitled to claim discharge only on actual payment and not on the mode of enforcement as envisaged under Section

125(3) Cr.P.C. Section 125(3) Cr.P.C. is applicable in all cases if a person who is a JD fails without sufficient cause to comply with an order, than the Magistrate for every breach of the order, may issue warrants for levying the amount due in the manner provided for levying fines and may sentence such a person, for any unpaid amount after the execution of the warrants, to imprisonment for a term which may extend to one month. In the instant case, there has been non-compliance of the orders passed by the Magistrate under Section 125 Cr.P.C. which led to the filing of an application under Section 125(3) Cr.P.C. for execution of the same. If the petitioner herein had been able to satisfy this Court that he had made payment under the said proceedings or even under the compromise arrived at, he would have been able to sustain arguments raised that the DHs are not entitled to claim maintenance twice. As there is nothing on the record to substantiate that any payment had been made towards maintenance as directed to be paid by the Magistrate under Section 125 Cr.P.C. these petitions deserve to be dismissed being devoid of any merit.

10. Dismissed.

11. A photocopy of this order be placed on the files of the connected cases.

26.11.2018

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.