

**245 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

1. **Date of decision : 24.01.2018
CRM-M-45337-2017**

Deepak Panchal

.....Petitioner(s)

Versus

Smt. Bhawna Panchal and another

...Respondent(s)

2. **CRM-M-45447-2017**

Deepak Panchal

.....Petitioner(s)

Versus

Smt. Bhawna Panchal and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. J.S. Duhan, Advocate
for the petitioner(s).

Mr. Vivek Goyal, Advocate
for the respondents.

ANITA CHAUDHRY, J.

The petitioner has placed on record a schedule, showing the detail of payments. A copy of it has also been supplied to the other side.

Learned counsel for the respondents states that there is a mistake in the calculations. The petitioner has also placed on record the orders passed in various petitions in the litigation pending between the parties.

The petitioner has challenged the order dated 16.11.2017 passed by Chief Judicial Magistrate, Kurukshetra in the execution vide which the petitioner was taken into custody for non-payment of maintenance allowance under Section 125 Cr.P.C.

The facts are not disputed. The parties were married in the year 2006 and a child was born to them. In the year 2009, the wife filed a petition under Section 125 Cr.P.C. The husband appeared and filed the written statement and thereafter no one appeared and he was proceeded against *ex parte* and five years later, the petition was allowed and 1/3rd share of his salary was ordered to be paid to both the applicants.

The wife filed an Execution Petition seeking recovery of the amount and Executing Court noted that the husband had paid only Rs.75,000/- out of the balance amount of over Rs.7.5 lacs and also noted his conduct and directed him to be sent to civil imprisonment for non-compliance. The husband was committed to civil imprisonment till 14.12.2017. The order was made by the Chief Judicial Magistrate on 16.11.2017. The petitioner filed this petition and the order passed by the Coordinate Bench reads as under:-

“Learned counsel for the petitioner contends that petitioner is presently lodged in Kurukshetra jail for non payment of maintenance allowance. He further submits that petitioner does not have sufficient funds. However, to show his bona fide, he is ready and willing to pay 75% of the total amount within a period of one week.

Notice of motion for 7.12.2017.

Process dasti as well.

A photocopy of this order be placed on the connected file.”

On the adjourned hearing, another counsel appeared and filed the power of attorney and stated that earlier counsel had made a statement which was against the instructions and stated that there was chances of amicable settlement and he handed over two drafts of Rs.50,000/- each. It was prayed that if the petitioner remained inside it would be difficult for him to arrange the payment and had sought interim bail. Further order was made to show his *bona fide* that he would also pay Rs.1 lac on or before the next date of hearing.

Another petition, meanwhile, had been filed bearing CRM-M-45447-2017, which was ordered to be taken up along with this case. Interim bail was allowed and the case was adjourned to 08.01.2018.

The petitioner moved an application seeking modification of the order and for extension of bail for three more days as there were directions to him to surrender before the Jail on 06.01.2018, since the interim bail was granted for four weeks to enable the petitioner to make the payment.

On 11.01.2018, two drafts of Rs.50,000/- each were handed over to the counsel for the respondents and the case was listed for today for final arguments.

The petitioner was also called for today. He states that they filed an application for setting aside the *ex parte* order and a sum of over Rs.9,40,000/- was due and he would be able to clear the same in instalments within three years. Counsel for the petitioner further states that the petitioner was ready even for conciliation and stay with the respondents. Counsel had pointed out to the offer made earlier before the

Courts below and the response of his wife. He had referred to Annexure

P-9 wherein the wife had stated that she was not interested for any reconciliation and was not interested in giving divorce.

The counsel was asked to make his submission on the merits of the petition. The counsel states that an application has been filed for setting aside the *ex parte* order, till that application is decided, the matter may be stayed. It was urged that today they have given the details of payment which is around 7.35 lacs. It was urged that on coming to know of the *ex parte* order, they had filed initially a revision which was withdrawn and direction was sought to file an application for setting aside the *ex parte* judgment and the matter is pending and the petitioner had paid the amount ordered in the petition filed under Section 9 of the Hindu Marriage Act. The counsel had urged that the petitioner was not shirking from his responsibility and was only seeking time and at present he was not earning and the Court below had taken a harsh view by sending the petitioner in custody for non-payment.

Counsel for the respondents urges that the parties have been litigating for a number of years and it has been clarified earlier that the payment which was made in the petition filed under Section 9 of the Hindu Marriage Act was not to be counted and, therefore, on the last date the petitioner was asked to give the details of the payments made in the petition filed under Section 125 Cr.P.C. and as per their own admission a sum of over Rs.9 lacs is due. The counsel further submits that the total calculation given in the schedule today is wrong and the total amount paid, according to the petitioner is Rs.7,11,000/-. Counsel further submits that the petitioner cannot approach this Court for stay and it is the Executing Court who could have stayed the proceedings and the

petitioner has to show that the order passed by the Court below was illegal.

A petition under Section 125 Cr.P.C. had been filed seeking maintenance in 2008. Same was allowed *ex parte* in 2014. Since the payment was not made, the wife approached the Executing Court. The Executing Court issued conditional warrants but the husband failed to appear nor paid the amount. The husband then came forward for compromise but compromise could not be effected. The Executing Court then again gave time to the husband to make the payment but he failed to appear. All these facts are noted in the impugned order. Having exhausted all the remedies, the wife then filed an application for sending the husband to civil imprisonment as he was a chronic defaulter and the amount due was touching Rs.8 lacs. The Executing Court sent the petitioner to civil imprisonment on account of non-payment of the maintenance. The petitioner was given an opportunity to clear all the arrears, he has still not cleared them.

There is no illegality in the order. Petition is dismissed.

Petitioner would surrender before the Executing Court within a period of one week to undergo the remaining part of custody.

Both the petitions are dismissed.

January 24, 2018

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**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No