

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

CRR(F)-123-2015(O&M)

Date of decision:-5.9.2018

Rajesh

...Petitioner

Versus

Sunita and others

...Respondents

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

Present: Dr.Parveen Hans, Advocate
for the petitioner.

Mr.Harsh Chopra, Legal Aid counsel
for the respondents.

H.S. MADAAN, J.

Rajesh – revisionist has challenged the order dated 17.4.2015 passed by District Judge (Family Court), Bhiwani vide which he has sentenced the revisionist to undergo civil imprisonment for twelve months on account of non-payment of arrears of maintenance allowance amounting to Rs.91,000/- to his wife.

According to the revision petitioner, this order is liable to be set aside since as per law the revisionist could be sentenced to undergo civil imprisonment for one month only. In support of his that contention, learned counsel for the revisionist has referred to authorities **Shahada**

Khatoon and others Versus Amjad Ali and others, (1999) 5 SCC 672 by the Apex Court, **Abdul Gafaoor @ Ashan Versus Smt.Hameema Khatoon and others, 2004(3) RCR(Criminal) 779** by a Division Bench of Andhra Pradesh High Court, **Sunil Kumar Jain Versus State, 2005(3) RCR(Criminal)485** by Rajasthan High Court.

On the other hand, learned counsel for the respondents has submitted that in each months default, the respondent, who is revisionist before this Court is liable to undergo civil imprisonment for one month. In support of his such contention, he has relied upon authority **Sunit Kumar Versus Rita and others, 2013(3) RCR(Criminal) 51** by a Co-ordinate Bench of this Court wherein discussing the scope of Section 125(3) Cr.P.C., it was observed that when on account of non-payment of arrears of maintenance the petitioner had been ordered to undergo imprisonment of twelve months on account of non-payment of arrears of maintenance to his wife and the minor daughter, there is no such limitation of one year since Section 125(3)(c) Cr.P.C. is applicable only for issuing warrant, for which, there should be an application made by the claimant and such amount shall be levied within a period of one year from the date on which it became due. In that case, the authority **Shahada Khatoon and others**(supra) was also noticed. In para No.12 of Sunit Kumar Versus Rita and others judgment referred above while dealing with the arguments of learned counsel for the petitioner that Executing Court cannot sentence the husband beyond the period of one month, it was found that the said argument was without force since in case **Shantha V. B.G. Shivnanjappa, 2005(2) RCR(Criminal) 796**, the Apex Court had observed that it must be

borne in mind that [section 125](#) of the 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. The arrears of maintenance which is payable to the respondents is for about 45 months. Sentencing a person to jail is a 'mode of enforcement'. It is not a 'mode of satisfaction' of the liability. The liability can be satisfied only by making actual payment of the arrears. The whole purpose of sending to jail is to oblige a person liable to pay the monthly allowance, who refuses to comply with the order without sufficient cause, to obey the order and to make the payment. The purpose of sending him to jail is not to wipe out the liability which he has refused to discharge. Monthly allowance is paid in order to enable the wife and child to live by providing with the essential economic necessities. Neither the neglected wife nor the neglected child can live without funds for purchasing food and the essential articles to enable them to survive. The first and foremost duty of the husband is to maintain the wife and the child. He may beg, borrow or steal. In this case the respondent has been sentenced to undergo imprisonment for a period of twelve months from 27.2.2013 on account of failure to pay the arrears of maintenance of Rs.3,30,000/- for the period from 19.5.2009 to 19.1.2013, which is a just and appropriate order, in default to pay the maintenance allowance. In other words, it is open for the court to award sentence up to a maximum of one month for each month of default committed by the person ordered to pay maintenance and the maximum limit of sentence of one month referred to in sub section (3) of [section 125](#) of the Code will be applicable for each month of default. The maintenance claim has to be

construed continuing liability which becomes due at the end of every month. So, the defaulter has to suffer imprisonment on each default to pay the maintenance. On undergoing imprisonment in default of maintenance will not wipe out the liability which shall subsist till the payment is made.

Therefore, the order passed by District Judge (Family Court), Bhiwani is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. The trial Court has considered the law laid down in **Kashmir Singh Versus Kartar Kaul 1988(1) RLW 210** that for the arrears of twelve months, imprisonment up to twelve months can be awarded. There is no illegality or infirmity therein.

Finding no merit in the revision petition, the same stands dismissed.

5.9.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No