

In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision (F) No. 433 of 2016 (O&M)
Date of Decision: 09.5.2018

Anil Kumar

.....Petitioner

Versus

Chestha

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Vishal Goel, Advocate
for the petitioner.

Ms. Kiran Bala Jain, Advocate with
Mr. Prabha Sharma, Advocate
for the respondent.

ANITA CHAUDHRY, J

CRM-17069-2018

Application is allowed and Annexures P-4 and P-5 are taken on record.

CRR(F)-433-2016

The petitioner impugns the order dated 16.11.2016 passed by the Family Court, Ambala who had ordered the issuance of conditional warrants of arrest for recovery of maintenance amount.

I have heard both the sides.

It is not in dispute that a petition under Section 125 Cr.P.C. was filed by the respondent in April 2001 and maintenance of Rs. 2,000/- per month was allowed to the minor daughter by the Chief Judicial Magistrate, Ambala on 4.3.2006.

An execution petition was filed in May 2006 seeking recovery

of the arrears which then were over Rs. 1,18,000/-. The Executing Court passed an order on 13.9.2011 and sent the petitioner to one month's imprisonment since the JD had stated that he had no money to pay. He did not express any willingness to pay the amount. The Executing Court instead of proceeding further with the execution consigned the file to the record room. An application was moved by the decree holder for taking up the file and to issue proceedings for recovery of the amount due. Since the decree holder made a statement that the JD had immovable property at Patiala, CJM Amabala vide its order dated 8.12.2011 transferred the execution to Patiala through proper channel.

When the matter came up before the concerned Court at Patiala, it was found that the JD did not have any property in Patiala and the Civil Judge (Jr. Divn.) vide its order dated 22.3.2016 disposed of the petition stating that since the JD had already undergone civil imprisonment of one month therefore, no further proceedings need to be taken up as he had already been punished and could not be punished again.

The minor through her mother filed an application under Section 128 Cr.P.C. in July 2016 for enforcement of the order dated 13.9.2011 and for recovery of the amount which was due to her as maintenance and it was pleaded that she was studying and her monthly expenses were growing and there were arrears to the tune of Rs. 2.5 lacs.

Notice was given to the JD. The lawyer representing JD appeared and made the statement that the JD had no property and there were no chances of effecting recovery. The Family Court issued conditional warrants of arrest for 6.1.2017 which have been assailed in this petition.

I have heard both the sides.

Counsel for the petitioner contends that recovery beyond a period of one month could not have been effected and even otherwise since the petitioner had already undergone custody of one month and the decree holder had not challenged the order passed by the Civil Judge (Jr. Divn.), Patiala, therefore that order became final. It was urged that the only remedy available with the respondent was a civil action and they could file a civil suit for recovery of the amount. Reliance was placed upon ***Kashinath Sethy versus Sanjukta Sethi and others 2011(3) R.C.R. (Criminal) 439, Shahad Khatoon and others versus Amjad Ali and others 1999 SCC (Criminal) 1029, Padam Sharma versus Vidya Devi 2000(1) SimLJ 137 and Poongodi and another versus Thangavel 2013(4) Criminal Court Cases 687 (S.C.)***.

On the other hand the submission on behalf of the respondent is that the Apex Court in ***Shantha @ Ushadevi and another versus B.G.Shivananjappa 2005(2) R.C.R. (Criminal) 796*** has clarified that the Courts should not insist on filing successive applications and the maintenance is a continuing liability and the arrears do not become time barred and merely because the petitioner has undergone one month of custody would not mean that the arrears would be wiped out and Section 125(3) Cr.P.C. only limits the sentence to one month and it does not imply that the arrears would get washed away and the petitioner has not been paying the maintenance to the daughter.

The submissions made on behalf of the petitioner are without any basis. The sentence of one month undergone by the petitioner would not absolve him from payment of maintenance to the child. The liability can be satisfied only by making actual payment. For every breach the Magistrate

can impose a sentence not more than one month. The respondent has been diligently pursuing her legal remedies and had immediately filed execution and she was entitled to the maintenance amount. It cannot be said that the respondent had slept over her rights. It would be useful to refer to the judgment rendered in ***Kuldeep Kaur versus Surinder Singh and another*** 1989 Civil Court Cases 106 (S.C.) wherein it was held as under:-

“6. A distinction has to be drawn between a mode of enforcing recovery on the one hand and effecting actual recovery of the amount of monthly allowance which has fallen in arrears on the other. 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. Be it also realised that a person ordered to pay monthly allowance can be sent to jail only if he fails to pay monthly allowance “without sufficient cause” to comply with the order. It would indeed be strange to hold that a person who “without reasonable cause” refuses to comply with the order of the court to maintain his neglected wife or child would be absolved of his liability merely because he prefers to go to jail. A sentence of jail is no substitute for the recovery of the amount of monthly allowance which has fallen in arrears. Monthly allowance is paid in order to enable the wife and child to live by providing with the essential economic wherewithal. Neither the neglected wife nor the neglected child can live without funds for purchasing food and the essential articles to enable them to live. Instead of providing them with the funds, no useful purpose would be served by sending the husband to jail. Sentencing to jail is the means for achieving

the end of enforcing the order by recovering the amount of arrears. It is not a mode of discharging liability. The section does not say so. Parliament in its wisdom has not said so. Commonsense does not support such a construction. From where does the court draw inspiration for persuading itself that the liability arising under the order for maintenance would stand discharged upon an effort being made to recover it? The order for monthly allowance can be discharged only upon the monthly allowance being recovered. The liability cannot be taken to have been discharged by sending the person liable to pay the monthly allowance, to jail. At the cost of repetition it may be stated that it is only a mode or method of recovery and not a substitute for recovery. No other view is possible. That is the reason why we set aside the order under appeal and passed an order in the following terms:”

In ***Shantha alias Ushadevi's case (supra)*** the Apex Court has held that the liability to pay maintenance under Section 125 Cr.P.C is in the nature of a continuing liability. The nature of the right to receive maintenance and the concomitant liability to pay was also noticed in a decision of the Apex Court in ***Shahad Khatoon's*** case (supra). Though in a slightly different context, the remedy to approach the Court by means of successive applications under Section 125(3) Cr.P.C highlighting the subsequent defaults in payment of maintenance was acknowledged by the Apex Court in ***Shahad Khatoon*** (supra).

The first proviso to Section 125 (3) Cr.P.C. does not extinguish or limit the entitlement of maintenance. The petitioner has defaulted and has not paid the amount and the arrears are outstanding and since it is a continuing liability, the liability remains. The submission of the petitioner that he had undergone one month of custody discharges his liability is

is made.

There is no merit in the petition. The petition is dismissed.

(ANITA CHAUDHRY)
JUDGE

May 09, 2018
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes