

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

CRR(F)-322 of 2017 (O&M)

Date of Decision: September 11, 2018

Jaswinder Singh

...Petitioner

Versus

Maneesha Rani and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Vijay Lath, Advocate
for the petitioner.

Mr. Parminder Singh, Advocate
for the respondents.

JAISHREE THAKUR, J. (Oral)

The instant criminal revision has been filed seeking to challenge the order dated 03.08.2017 passed by the learned District Judge (Family Court), Ambala whereby, the petitioner herein has been sent to simple imprisonment due to non-payment of maintenance.

Learned counsel appearing on behalf of the petitioner argued that the said order is not sustainable, on account of the fact that the petitioner herein has initially been sent to imprisonment for a period of one month upto 06th May, 2017, on which date the petitioner was produced from custody and again sent on the same date to simple imprisonment upto 05.06.2017. Similarly, he was again produced on 05.06.2017 and sent to further imprisonment upto 04.07.2017 and subsequently too, in the similar

fashion upto 03.08.2017 and then upto 02.09.2017. It is contended that in this manner, the petitioner has been kept in imprisonment for five months for default in making the payment of maintenance. Learned counsel for the petitioner relies upon judgment rendered in **Laljee Yadav vs. State of Bihar, 2011(16) RCR (Criminal) 563** wherein, it has been held that the custody of a husband cannot be continued and the order cannot be made in a mechanical manner. Reliance has also been placed upon judgment rendered in **Ashok Prasad vs. State of Bihar, 2001(3) RCR (Criminal) 23** wherein, it has been held that the accused has to be awarded sentence of one month for default of each month's allowance and the husband, who has been arrested and sent to judicial custody continuously for a period more than 4 years at regular intervals, the said order was set aside.

Per contra, learned counsel appearing on behalf of the respondent-claimant submits that the petitioner herein is in default of making the monthly maintenance. Reliance has been placed upon judgment rendered in **Smt. Kuldip Kaur vs. Surinder Singh and another, AIR 1989 SC 232** to submit that a husband cannot be absolved of his liability, merely because he has been sent to jail. It is also argued that as on date, no maintenance amount has been given to the respondent herein despite the fact that the arrest of the petitioner was stayed as far back as 31.08.2017 i.e. a year ago.

I have heard learned counsel for the parties and deem it appropriate to set aside the order dated 03.08.2017 which is under challenge, on the ground that the same has been passed in a mechanical manner and without taking note of the fact that the petitioner herein has

been in continuous custody for more than five months.

Ordered accordingly.

The matter is remanded to the court below for passing order afresh and to proceed with the execution petition in accordance with law.

The petition stands disposed of accordingly.

September 11, 2018
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No