

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

**CRR (F)-495-2018 (O&M)
Date of Decision : 25.07.2019**

Amit Mehra Petitioner
Versus

Smt. Manju Respondent

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Amardeep Sheoran, Advocate
for the petitioner.

Mr. Sunny Namdev, Advocate
for the respondent.

RAJ SHEKHAR ATTRI, J. (Oral)

The petitioner has challenged the order dated 07.09.2018, passed by the learned Principal, District Judge, Family Court, Bhiwani vide which his defence has been struck off.

Smt. Manju-respondent herein has preferred an application for maintenance under the provisions of Section 125 of the Code of Criminal Procedure (for the sake of brevity 'the Code'). In that petition, the interim maintenance was awarded to her at the rate of Rs.5,000/- but the petitioner failed to pay the same. He was afforded adequate opportunities for the said purpose. On 30.07.2018, the case was adjourned to 07.09.2018 with the following observations:-

“No PW is present. Payment of interim maintenance not made.

Adjournment is requested. Heard. To come up on 07.09.2018 for evidence of petitioner as well as making payment of interim

maintenance.

It is made clear that if the respondent not paid maintenance amount on the next date, then defence of respondent may be struck off and conditional warrant of arrest against him may be issued.

In compliance of the aforesaid order dated 30.07.2018, the petitioner did not pay the arrears of interim maintenance, therefore, his defence was struck off. Even today, the petitioner failed to make the payment of arrears of interim maintenance. On the previous day i.e. 15.07.2019, the petitioner was offered to pay the maintenance by providing certain items i.e. 20 kgs. rice, 05 kg. sugar, 05 kg. different pulses, 15 kg wheat, 05 kg pure ghee per month; three wearing suits in each quarter and two litre milk every day to the respondent-wife within three days i.e. 18.07.2019. Today it has been submitted that he took all these items before the Sarpanch of the village Rewari Khera but the respondent-wife did not accept the same. This version has been contested by the respondent.

Affording opportunity to lead evidence is a part of the fair trial.

While holding the criminal trial, a Judge has to take in mind the principle of fair trial.

To the mind of this Court, a fair trial is the heart of the criminal jurisprudence. It is well settled that denial of fair trial is crucifixion of human rights. While emphasizing the principle of fair trial and the practice of the same in the course of trial, it is obligatory on the part of the Courts to see whether in an individual case or category of cases, because of non-compliance of a certain provision, reversion of judgment of conviction is inevitable or it is dependent on arriving at an indubitable conclusion that substantial injustice has in fact occurred. Hon'ble Supreme Court in **Zahira**

Habibullah Sheikh and another vs. State of Gujarat (SC) 2006 (2) RCR (CrL.)

448 has made the following observations:-

“The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the Courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.”

The husband is bound to comply with the maintenance order and in case he failed to do so, the court has ample power to strike out his defence so that he may be compelled to make the payment. In spite of that, this Court keeping in view the interest of justice and the principle of fair trial, is of the opinion that the petitioner be given one opportunity to clear

the arrears of interim maintenance and in doing so his defence be restored.

Consequently, the instant petition stands partly allowed with a direction to the petitioner to clear the arrears of maintenance within a period of four weeks from today and in doing so the impugned order stands set aside and his defence be restored and he be allowed to lead evidence in his defence.

23.07.2019
mamta

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No