

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

CRR(F) No.83 of 2020 (O&M)

Decided on:- January 22, 2020.

Sarmail Singh.

.....Petitioner.

Versus

Baljit Kaur and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Prithvi Raj Yadav, Advocate
for the petitioner.

HARI PAL VERMA, J.

The petitioner, who is a Head Constable serving with the Punjab Police, has filed the present criminal revision impugning the order dated 07.01.2020 passed by learned Principal Judge, Family Court, Gurdaspur, whereby the application filed by the petitioner for recalling of the order dated 18.08.2019 passed by the family Court, whereby, conditional warrants of arrest were issued against the petitioner, was dismissed and his conditional warrants were ordered to be issued for 24.01.2020 with a direction to the concerned SHO to get executed the conditional warrants and to report the Court accordingly.

Briefly stated, the respondents No.1 and 2, who are the wife and minor daughter of the petitioner, had filed an application under Section 125 Cr.PC on 20.09.2005 so as to seek maintenance. Vide order dated 11.01.2012 (Annexure P-1), learned Judicial Magistrate 1st Class, Gurdaspur had allowed

the said application and granted maintenance @ Rs.3,500/- per month to respondent No.1-wife and Rs.1,500/- per month to respondent No.2-minor daughter from the date of filing of the application.

Since the amount of maintenance was not being paid by the petitioner regularly, the respondents were made to file such application for enforcement of the aforesaid order dated 11.01.2012 passed by learned Magistrate before the family Court, Gurdaspur. In such like execution, vide order dated 18.08.2019 (Annexure P-2), learned family Court had issued conditional warrants of arrest of the petitioner for 16.01.2020 in order to realize the maintenance amount of Rs.1,90,000/- outstanding against the petitioner. However, the petitioner had moved an application for recalling the conditional warrants and has disputed the outstanding amount, but the said application was declined and conditional warrants of the petitioner were ordered to be issued for 24.01.2020 with a direction to the SHO to get the same executed and to report the Court, vide impugned order dated 07.01.2020 passed by the family Court.

Learned counsel for the petitioner has argued that as is apparent from the certificate regarding deduction (Annexure P-5), the necessary deduction is being made from the salary of the petitioner every month. However, the amount so deducted for the period w.e.f. 01.08.2016 to 30.06.2019 has never been adjusted by the family Court.

He has further argued that perusal of the application (Annexure P-3) moved by the petitioner for recalling of the conditional warrants of arrest would show that only Rs.64,110/- is pending as arrears of maintenance and the petitioner is ready to pay the same. However, the family Court has passed

the impugned order dated 07.01.2020 without application of mind. Therefore, the impugned order dated 07.01.2020 is liable to be set aside.

I have heard learned counsel for the petitioner.

The petitioner in the case is a Head Constable working with the Punjab Police and is in arrears of maintenance payable to his wife and minor daughter. The argument of learned counsel for the petitioner that at the most, the petitioner is in arrears of Rs.64,110/- only and the amount paid w.e.f. 01.08.2016 to 30.06.2019 has not been adjusted by the family Court, cannot be accepted for the reason that the fact, as to whether the petitioner has paid the maintenance amount payable to the respondents, can only be proved by the petitioner while appearing before the family Court. However, the impugned order dated 07.01.2020 passed by the family Court shows that the petitioner did not appear there on that date, rather, his conducting counsel appeared there and made a statement that the petitioner is ready to pay the maintenance and the same be deducted from the salary of the petitioner. Therefore, in case the amount of maintenance was being deducted from the salary of the petitioner, it was obligatory upon the petitioner to appear before the family Court on that date and to produce necessary documents in support of his contention.

Further, it is the admitted case of the petitioner while moving application (Annexure P-3) for recalling the order dated 18.08.2019 wherein the petitioner himself has submitted that the present execution is fourth one and pertains to the period w.e.f. 21.07.2016 to 20.09.2019. Though for the period of the present execution, the total amount comes to Rs.1,90,000/-, but excess payments have been made in the previous execution applications. So

after deduction of excess money received by the respondent in the previous executions, the actual recoverable amount comes to Rs.64,110/-.

Thus, the amount of Rs.64,110/- is not in dispute. The petitioner being Head Constable in Punjab Police is required to pay regular maintenance to his wife and minor daughter. But instead of making such maintenance to his wife and daughter, they are being compelled to file such repeated execution. When the petitioner is getting salary from the department, it is incumbent upon him to make payment of the maintenance regularly.

Moreover, perusal of the paper book reveals that the document (Annexure P-5) regarding deduction of amount w.e.f. 01.08.2016 to 01.06.2019 had been issued by the office of Senior Superintendent of Police, Batala on 29.06.2019, but the petitioner has not annexed the same before the family Court along with his application dated 14.10.2019 (Annexure P-3) for recalling of his conditional warrants. Instead of appearing before the family Court and to produce the details of the amount so paid by him as maintenance to the respondents, he has invoked the revisionary jurisdiction of this Court, though the scope of revisional jurisdiction is otherwise vested with limited powers. The petitioner has not been able to prove that in what manner, the impugned order dated 07.01.2020 passed by the family Court suffers from illegality, irregularity or perversity, which may warrant interference of this Court by invoking its revisional jurisdiction.

Accordingly, the impugned order dated 07.01.2020 passed by learned Principal Judge, Family Court, Gurdaspur is affirmed and the present revision petition, being devoid of any merit, is dismissed with costs of Rs.25,000/- and this costs shall be payable to the respondents so as to

compensate them for forced litigation. Moreover, the respondents are wife and minor daughter of the petitioner.

January 22, 2020
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No