

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

COCP No.484 of 2020

Date of Decision: 11.09.2020

Madhu and another

.....Petitioners

Vs

Rajesh Gupta

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Rajiv Kataria, Advocate
for the petitioners.

Mr. B.S. Bhalla, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. The case was taken up for hearing through video conferencing.

[2]. Petitioners have preferred the present petition under Section 10 of the Contempt of Courts Act, 1971 against the respondent for wilfull disobedience of order dated 13.06.2019 passed by this Court in CRR No.718 of 2012.

[3]. Brief facts are that initially petitioners filed a petition for grant of maintenance. An amount to the tune of Rs.500/- was awarded under the unamended provisions of Section 125 Cr.P.C. Later on the petitioners filed a fresh petition under Section 127 Cr.P.C. for enhancement of maintenance on

account of change of circumstances. The Chief Judicial Magistrate, Moga vide order dated 18.01.2012 passed an order granting maintenance to the tune of Rs.5500/- per month each to the petitioners. The order was made applicable from 18.01.2012 i.e. from the date of order.

[4]. Feeling aggrieved against the inadequacy of the amount of maintenance, petitioners filed CRR No.718 of 2012 before this Court. The petition was allowed vide order dated 03.09.2014, thereby awarding maintenance @ Rs.20,000/- per month to petitioner No.1 and Rs.10,000/- per month in favour of petitioner No.2. The maintenance was awarded from the date of filing of application for enhancement of maintenance.

[5]. Respondent filed SLP (Criminal) No.10 of 2015 against the aforesaid order dated 03.09.2014 in the Hon'ble Apex Court. The order was set aside by the Hon'ble Apex Court on 18.07.2016 on the ground that the order was passed by the High Court, without taking into consideration the actual salary statement of the present respondent which was stated to be the only income of respondent during the particular period. The order passed by the High Court was set aside and the parties were directed to appear before the High Court for re-adjudication of the matter on merits. The High Court was also to take into consideration the salary statement of

husband/respondent to determine the maintenance permissible to the present petitioners in accordance with law.

[6]. Thereafter, the said revision petition was taken up by this Court and vide order dated 13.06.2019, the revision petition was allowed. The amount of maintenance in favour of petitioner No.1 was enhanced from Rs.5500/- to Rs.25,000/- per month and maintenance amount in favour of petitioner No.2 was enhanced from Rs.5500/- to Rs.20,000/- per month from the date of order passed by the Chief Judicial Magistrate, Moga. The arrears of enhanced maintenance was ordered to be paid in three equal installments starting from 31.07.2019 within six month. For ready reference, operative part of the order reads as under:-

“In this view of the matter, the present revision petition is allowed and the amount of maintenance to the wife is enhanced from R 5,500/- to R 25,000/- per month and maintenance amount is also enhanced to the daughter from R 5,500/- to R 20,000/- per month from the date of the order of Chief Judicial Magistrate, Moga dated 18.1.2012. However, the arrears of enhanced maintenance shall be paid in three equal instalments starting from 31.7.2019 within six months.

Sd/-

(RAJ SHEKHAR ATTRI)
JUDGE ”

June 13, 2019

[7]. Perusal of the aforesaid operative part of order would show that in view of word “shall” it was mandatory for the respondent to pay the arrears of enhanced maintenance in

three equal installments starting from 31.07.2019 within specified period of six months. The arrears were required to be cleared by the respondent upto 31.01.2020.

[8]. The SLP filed by the respondent against the aforesaid order was dismissed by the Hon'ble Apex Court. Even a review application filed in the Hon'ble Apex Court was also dismissed. SLP of the petitioner to the extent of seeking the aforesaid maintenance applicable from the date of filing of the application is still pending. *Qua* the respondent, the order dated 13.06.2019 passed by this Court in CRR No.718 of 2012 has attained finality.

[9]. Perusal of interlocutory orders passed in this contempt petition would show that notice of motion was issued on 19.05.2020 and following order was passed:-

"CM-6307-CII-2020

This application for advancement of the hearing of the main case is allowed and the main case is taken up for hearing today.

COCP-484-2020

Notice of motion returnable on 15.06.2020.

Mr. Rajiv Kataria, learned counsel for the petitioners, would assert that the order dated 13.06.2019 passed by this Court in CRR-718-2012 (O&M) has attained finality insofar as the respondent is concerned, inasmuch as SLP (Cr) No.9989 of 2019 filed by him against the said

order was dismissed by the Supreme Court on 15.11.2019. It is his further contention that despite the same, the respondent is not paying the maintenance and the arrears of maintenance as directed by this Court. In the meanwhile, the petitioners who are rendered penniless are unable to maintain themselves.

In terms of the order dated 13.06.2019, the respondent has to pay R45,000/- per month to the petitioners towards maintenance. The arrears in this regard from 18.01.2012 were to be paid in three installments, starting from 31.07.2019. The period stipulated for payment of these arrears, being six months, has already expired. Mr. Rajiv Kataria, learned counsel, would assert that the respondent has not chosen to pay a pie towards the arrears despite his appeal being dismissed by the Supreme Court.

This Court is conscious of the fact that, in the ordinary course, interim orders would not be passed in a contempt case, but given the peculiar circumstances prevailing as on date due to the Coronavirus pandemic, it is utmost necessary that the respondent abide by the order which he has suffered and which has attained finality, insofar as he is concerned. More so, as the petitioners are stated to be in penury. The respondent shall therefore deposit at least 50% of the monthly maintenance payable by him since the passing of the order on 13.06.2019 by the next date of hearing, to show his bonafides. The said amount shall be deposited in the bank account of the first petitioner, particulars of which shall be furnished by her at the time of serving notice. In the event the respondent fails to make payment in terms of this order in proof of his bonafides, he shall be present in person on the next date of hearing to explain his stand.

Service of notice upon the respondent is permitted to be carried out by the first petitioner through his personal e-mail as well as through his employer, the National Highways Authority of India.”

[10]. Perusal of the aforesaid order would show that the order was passed in peculiar circumstances of the case due to the situation arising out of COVID-19 pandemic. The Court has noticed that the order dated 13.06.2019 has attained finality so far as respondent is concerned. Petitioners are stated to be in penury. The respondent was directed to deposit at least 50% of the monthly maintenance payable to the petitioners since the passing of order dated 13.06.2019 by the next date of hearing. The amount was ordered to be deposited in the Bank account of petitioner No.1. In the event of failure on the part of respondent, he was required to be present in Court on the next date of hearing. The case was adjourned for 15.06.2020.

[11]. On 15.06.2020, the Court found that the order dated 19.05.2020 was not complied with and one more opportunity was granted to the respondent to comply with the said order. Registry was directed to issue bailable warrants to secure presence of the respondent for 07.07.2020 to be executed by the District Judge of the concerned area. On 07.07.2020, learned counsel for the respondent submitted that payment of an amount of Rs.1.5 lakhs shall be made unconditionally by the

respondent. He raised preliminary submission with regard to maintainability of the contempt petition. Learned counsel also showed inability of the respondent on account of his indisposition to pay arrears claimed by the petitioners immediately, but undertake to pay an amount of Rs.1.5 lakhs unconditionally which was 50% of the accumulated arrears in terms of order dated 13.06.2019. Thereafter, the case was adjourned on two occasions on 10.08.2020 and 04.09.2020.

[12]. Both the learned counsel have argued the case on merits. Learned counsel for the petitioners submitted that the respondent has not complied with the order dated 13.06.2019 and has wilfully flouted the same even after grant of reasonable opportunities by this Court during pendency of the present petition. The statement of learned counsel on behalf of respondent as recorded in the order dated 07.07.2020 was self-serving statement of the respondent which was made unconditionally and he raised objection *qua* maintainability of the present contempt petition. Respondent did not pay the entire arrears of maintenance as directed by this Court vide order dated 13.06.2019 passed in CRR No.718 of 2012. It was mandatory on the part of respondent to comply with the aforesaid order by making payments in three equal installments starting from 31.07.2019 till 31.01.2020. No extension in time

was ever sought by the respondent before this Court.

[13]. Learned counsel for the petitioners submitted that petitioner No.2 after attaining majority and from the date of her marriage, will not be entitled for further maintenance and petitioner No.1 has no objection if the maintenance qua petitioner No.2 is stopped in this eventuality. However, in any case petitioner No.1 is entitled for entire arrears of maintenance as per order dated 13.06.2019 and petitioner No.2 is also entitled for maintenance till the date of her marriage.

[14]. Learned counsel for the petitioners further submitted that contempt petition is maintainable for the maintenance along with arrears of maintenance in view of non-payment of maintenance and arrears of maintenance to the petitioners. The order dated 13.06.2019 has attained finality qua the respondent. A particular time period was given in the order on mandatory note. The entire arrears were required to be paid by the respondent upto 31.01.2020. It was in the form of direction to the respondent.

[15]. Learned counsel for the petitioners further submitted that the facts are glaring and the respondent has not only disrespected the order intentionally but has shown wilfull disobedience to the order of the Court. The action of the respondent replicates wilfull disobedience and has created a

situation for the petitioners for filing the contempt petition. Though amount of maintenance can be recovered by taking recourse to the execution proceedings as well, but in the present set of circumstances, when mandatory direction was issued to the respondent to pay arrears of maintenance in three equal installments starting from 31.07.2019 till 31.01.2020, it would result into great hardship to the petitioners and the administration of justice would be impeded. The Court is to see that its order is carried and no party should be allowed to wilfully flout the order and impede the administration of justice. In the facts and circumstances of the case, this Court must exercise powers under the Contempt of Courts Act.

[16]. Learned counsel for the petitioners further submitted that in the facts and circumstances of the case, the only inference that can be drawn against the respondent is that he has not intentionally and deliberately complied with the order of the Court and is thus guilty of civil contempt under Section 2(ii)(b) of the Contempt of Courts Act and is liable to be punished under Section 12 of the Act.

[17]. Learned counsel for the petitioners further submitted that the object of initiation of proceedings under the Contempt of Courts Act is only to see that the order of Court is complied with, but in the instant case despite the interlocutory orders passed

by this Court from time to time, the respondent has shown even disrespect to the orders passed by this Court and as of now, he is in arrears of lakhs of rupees. Due to the situation arising out of COVID-19 pandemic, the petitioners cannot be left high and dry without any remedy. The Courts are not functioning physically and are working through video conferencing, therefore, the respondent needs to be punished in accordance with law. Learned counsel placed reliance upon **Sarladevi Bharkumar Rungta vs. Bharkumar Shivprasad Rungta and another, 1988 CriLJ 558; Smt. Shaheda Sarwar Khan vs. Sarwar Ahmed Rauf Khan and others, 2001(2) HLR 231; Anita B. Devnani vs. Bhagwan H. Devnani and Ors., 2006(18) R.C.R. (Civil) 400 and Three Cheers Entertainment Pvt. Ltd. & Ors. vs. C.E.S.C. Ltd., 2008(4) R.C.R. (Criminal) 936.**

[18]. Per contra, learned counsel for the respondent on the strength of **Contempt Petition(Civil) No.591 of 2019 in SLP(Civil) 5350 of 2019** titled '**Hukum Chand Deswal vs. Satish Raj Deswal**' decided on 06.05.2020 by the Hon'ble Apex Court vehemently submitted that the contempt is not maintainable when the order is executable.

[19]. Having heard learned counsel for the parties, I find that ratio of **Hukum Chand Deswal's** case (supra) is in the context

that when complex questions of facts are involved, the same need not be adjudicated in the contempt proceedings. In the aforesaid case, the dispute was with regard to the order passed in a suit for permanent injunction, possession and recovery of rent, damages/mesne profits till recovery of possession. Intricate questions of facts were involved. The said case was not a case of maintenance under Section 24 of the Hindu Marriage Act and there was no such direction of the Court like in the instant case, when the Court in its order dated 13.06.2019 passed in CRR No.718 of 2012, directed that the arrears of maintenance shall be paid in three equal installments starting from 31.07.2019 within six months. It was mandatory for the respondent to comply with the aforesaid order within the time prescribed.

[20]. Even in the aforesaid judgment i.e. **Hukum Chand Deswal's** case (supra), it was so observed in para No.16 while relying upon ratio of **R.N. Dey & Ors. vs. Bhagybati Pramanik & Ors., (2000) 4 SCC 400** that weapon of contempt is not to be used in abundance. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the Court is to be exercised for maintenance of the Court's dignity and majesty of law. In view of aforesaid, it is not absolute to contend that in

every case, execution has to be filed for implementation of order. Discretion has been given to the Court and the same has to be exercised for maintenance of dignity of the Court and majesty of law.

[21]. The respondent has flouted the order dated 13.06.2019 passed in CRR No.718 of 2012 with impunity. Firstly, the order dated 13.06.2019 was not complied by making three equal installments starting from 31.07.2019 upto 31.01.2020 i.e. within the time stipulated in the order itself. Secondly, even this Court gave chance to respondent to comply with the order, but the respondent made a self-serving statement in the context of paying of Rs.1.5 lakhs unconditionally without adhering to the payment of arrears of maintenance. In the order dated 13.06.2019 itself executory direction/mechanism was provided and violation of the said order would result in contempt of Court. The object of taking action under Contempt of Courts Act is not to punish the respondent, but the object is to see that Courts' orders are complied with.

[22]. From the aforesaid facts, I find that respondent has wilfully and deliberately violated the order dated 13.06.2019 passed in CRR No.718 of 2012. He has no respect for the Court's order. Even during course of hearing, learned counsel for the respondent on instruction avoided the question of

payment of arrears of maintenance except to say that present contempt petition is not maintainable.

[23]. In view of aforesaid situation, this Court is left with no alternative but to hold that respondent has violated the order intentionally and is guilty of civil contempt under Section 2(b) of the Contempt of Courts Act and is liable to be punished under Section 12 of the Act. Accordingly, I convict the respondent by holding him guilty of civil contempt under Section 2(b) of the Contempt of Courts Act and sentence him to simple imprisonment for a period of two months with fine of Rs.2,000/-. In case the respondent deposits the entire arrears of maintenance till date as per order dated 13.06.2019 passed in CRR No.718 of 2012 within one month from today and continues to pay monthly maintenance to petitioner No.1 at the rate so ordered by this Court, the sentence shall remain suspended. In case of default, the sentence awarded to the respondent shall be enforceable forthwith.

[24]. Disposed of.

September 11, 2020

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No