

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

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**Crl. Misc. M- 13399 of 2019 (O&M)
Date of Decision: 07.02.2020**

Avtar Singh

...Petitioner(s)

Versus

State of Punjab and Anr.

...Respondent(s)

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Veneet Sharma, Advocate
for the petitioner.

Mr. Sidakmeet Singh Sandhu, Asstt. A.G. Punjab.

Respondent No.2 in person with
Mr. B.D. Sharma, Advocate

JAISHREE THAKUR, J. (Oral)

This petition has been filed seeking to challenge the order dated 28.02.2019 Annexures P-8 passed by JMIC, Amritsar in execution case No.199 of 2013 titled as “Sukhraj Kaur Vs. Avtar Singh”.

In brief the facts are that a matrimonial discord arose between the petitioner and respondent No.2 which led to the registration of an FIR No.146 dated 28.06.2007 under Sections 406, 498A IPC at Police Station Jandiala, District Amritsar against the petitioner and his other family members. After the registration of the FIR, a petition under Section 12 of the Protection of Women from Domestic Violence Act 2005 was also filed

by the wife against the petitioner herein. The said petition was decided finally on 01.04.2016 and the complainant/respondent-wife was held entitled to a sum of Rs.3500/- per month whereas, minor daughter was held entitled to Rs.2500/- per month. As the petitioner failed to pay the said amount, respondent No.2 was forced to file an execution petition for enforcement of the said order and consequently the petitioner was sent to civil imprisonment vide order dated 17.09.2018 for a period of one month upto 17.10.2018. Since there was non-compliance of the order regarding payment of maintenance, the Magistrate again sent the petitioner herein to civil imprisonment for another one month vide order dated 17.10.2018. The operative part of the order reads as under:

“It is not a fit case to release the respondent. Hence, the respondent is again send to the civil imprisonment for a period of one month i.e. Upto 17.11.2018 and be produced in the Court on said date. However, it is made clear that in case the respondent or anybody on his behalf, if deposited the due amount with jail Superintendent, he be released straightway with further direction to remit the amount so deposited in the Court forthwith. Now file be put up on 17.11.2018.”

Aggrieved by this order, the petitioner herein approached this Court by filing CRM-M No. 48477 of 2018 raising an argument that the petitioner herein could not have been retained in imprisonment for a period longer than one month in default of payment of arrears of maintenance by relying upon judgment rendered in **“Shahada Khatoon and others Vs. Amzad Ali and others”, 1999 (V) SCC 672 .** This Court vide order dated 01.11.2018 while issuing notice of motion directed the petitioner herein to deposit a sum of Rs.4 lacs with the Executing Court and ordered the

petitioner to be released on interim bail. Consequently petitioner was released on interim bail on 05.12.2018 after his depositing the aforesaid amount of Rs.4 lacs. Subsequently upon other application of respondent No.2 the Executing Court, vide impugned order dated 28.02.2019 ordered the property of the petitioner to be put to auction besides directing the petitioner to deposit a sum of Rs.4 lacs in the Court.

Counsel for the petitioner urges that imprisonment cannot be extended mechanically and the Court has to exercise discretion in each case and decide the maximum penalty for default, whereas learned counsel appearing on behalf of respondent No.2 herein would contend that respondent No.2-wife has been litigating for maintenance and for her survival as the petitioner herein is in default for more than Rs.10 lacs. It is argued that maintenance allowed under the provisions of the Domestic Violence Act 2005 were never challenged and has attained finality. It is also submitted that, in fact, the petitioner herein has deposited an amount Rs.4 lacs with the Executing Court and the same should be released in favour of respondent herein.

I have heard learned counsel for the parties at length and find that the impugned order is wholly unsustainable. The question whether the Executing Court can refrain from releasing the judgment debtor on account of non-payment of arrears in one execution petition has already been decided in *Rakesh @ rakesh Lohiya Vs. Babita*, 2018 (4) RCR (Criminal) 220 the operative para of the aforesaid judgment reads as under:-

“In view of the discussions made above, the order of the learned Family Judge is wholly unsustainable. I am fortified in my view by a decision of

the Apex Court reported in (1999) 5 SCC 672:(1999 AIR SCW 4880) (Shahada Khatoon v. Amjad Ali). The Apex Court has gone to the extent of saying that the confinement can extend to only one month and if even after the expiry of one month the delinquent husband does not make the payment of arrears then the wife can approach the Magistrate again for a similar relief but the confinement of the husband must be only of one month. This decision of the Apex Court further lays down a fetter in the exercise of this power by the Judicial Magistrate or the Family Judge to the extent that only a confinement for a period of one month can be passed on an application whether the amount claimed by the wife as arrears is for more than one month or for only a month. In one stroke no composite confinement can be directed by the Court. It very clearly flows from the above decision.

In other words Executing Court could not have retained the petitioner in custody on account of default in satisfying the execution petition and the impugned order is liable to set aside.

Before parting with this order, it is noticed that the petitioner herein has not made payment towards arrears of maintenance subsequent to the order that had been passed in the Execution petition. However since he has already deposited an amount of Rs.4 lacs with the Executing Court in the form of bank draft, the same be returned to the petitioner herein by the Executing Court for him to convert the same in a Fixed Deposit Receipt in the name of minor daughter. The Fixed Deposit receipt will be drawn on Punjab National Bank and same would be handed over to the respondent-wife within a period of six weeks on return of the said draft. Respondent No.2 who is present in Court submits that she will open a bank account in the name of the minor daughter in Punjab National Bank and requests that she may be permitted to utilise the Fixed Deposit Receipt interest on a

quarterly basis for the welfare of a minor daughter. In the opinion of the Court, this seems to be reasonable request.

Let the details of the Bank account be furnished to the petitioner, who would hand over the Fixed Deposit Receipt to respondent No.2-wife, who would be entitled to utilize the interest accrued thereon. The Fixed Deposit Receipt shall be for a period of four years till the the minor daughter attains majority. It is also further clarified that the payment of Rs.4 lacs would be adjusted against any balance amount of the maintenance that is due under the Domestic Violence Act, for which the respondent-wife is at liberty to file execution thereof.

The petition stands disposed of in above terms.

February 07, 2020

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**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes
Yes/No