

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

Crl. Misc. M 30778 of 2016 (O&M)
Date of decision: 5.3.2020

Sukhwant Singh

...Petitioner

Versus

Harjinder Kaur and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Upender Prasher, Advocate,
for the petitioner.

Mr. Aakash Singla, Advocate,
Amicus Curiae, for respondents No. 1 and 2.

Mr. Sidakmeet Singh Sandhu, AAG, Punjab.

JAISHREE THAKUR, J. (Oral)

These proceedings arises out of an execution petition that was filed by the decree-holders, namely respondents No.1 and 2 herein, seeking maintenance with effect from 26.10.2011 till 25.9.2012 for a total period of 11 months @ ₹1800/- per month, which comes to ₹19,800/-. The executing court issued notice, in response to which the petitioner/judgment-debtor put in appearance and contended that he was not liable to pay any amount since the decree-holders had already received a sum of ₹2 lakhs in the proceedings that had been initiated under Section 13-B of the Hindu Marriage Act. However, those proceedings were not culminated as respondent No.1 failed to give her consent at the second motion. He also submitted that an amount

of ₹1 lakh had also been paid to her. So a total amount of ₹3 lakhs ought to

be adjusted against any amount due to him. The Chief Judicial Magistrate, Amritsar, dismissed the execution petition by order dated 19.11.2013, which was challenged before the Additional Sessions Judge, Amritsar, who by order dated 14.10.2014 set aside the order and remanded back the matter to the executing court with a direction to decide the application in accordance with law and also granted liberty to the petitioner herein to claim adjustment of ₹2 lakhs already paid by him to respondent No.1. The order dated 14.10.2014 came to be challenged by the present petitioner before this Court in Crl. Misc. M 8605 of 2015, which was dismissed. After dismissal of the petition by this Court, the matter again reached the executing court, who by order dated 10.8.2016 directed that the maintenance amount of ₹19,800/- would be due and payable to the decree-holders.

Aggrieved against the said order, the petitioner herein argues that the court below has erred in not taking into consideration the fact that the petitioner herein had actually made payment of ₹3 lakhs and the adjustment of any arrears of maintenance ought to be made against ₹3 lakhs which was handed over to the decree-holders/respondents herein.

Learned counsel appearing on behalf of the respondents No. 1 and 2 would argue that in fact the amount of ₹1 lakh which is being agitated by the learned counsel for the petitioner was in lieu of dowry articles. It is argued that this issue had already been agitated and the same had attained finality and, therefore, it is only an amount of ₹ 2 lakhs which has to be adjusted against the arrears of maintenance.

Learned counsel for respondents No. 1 and 2 has very fairly calculated the amount of maintenance as due to respondents herein as

payable in proceedings initiated under Section 125 of the Code of Criminal Procedure. The Judicial Magistrate 1st Class, Amritsar by order dated 13.11.1999 had allowed maintenance @ ₹900/- per month in the proceedings that had been initiated under Section 125 of the Code of Criminal Procedure from the date of the filing of the petition. The amount of maintenance assessed at ₹900/- per month was ultimately enhanced by the Chief Judicial Magistrate in proceedings under Section 127 of the Code of Criminal Procedure by order dated 9.1.2004 (Annexure P/1) available on the record. The enhanced amount was to be paid from the date of the order i.e. 9.1.2004. So, if the amount as payable is calculated, it would reflect that ₹900/- is payable for a period of 50 months, as per order dated 13.11.1999, i.e. from 13.11.1999 to 13.1.2004, which comes to ₹45,000/-. Similarly a sum of ₹1,87,980/- is payable for the period of 104 months and 13 days from 13.1.2004 to 25.09.2012. Thus, the gross amount payable from 13.11.1999 to 25.09.2012 was ₹2,32,980/-. The execution petition had been filed for a period of 11 months spanning from 26.10.2011 to 25.9.2012, which amount is inclusive of the gross amount as mentioned above.

After hearing learned counsel for the parties and perusing the documents annexed with the petition, this Court is of the opinion that there is no infirmity with the order so passed, whereby the petitioner has been directed to make payment of ₹19,800/-. Consequently, the petition stands dismissed. Needless to say that an amount of ₹2 lakhs which was initially paid to the decree-holders is to be deducted from any of the arrears of maintenance as due and payable till 26.10.2011. In case, the petitioner is aggrieved against the payment of maintenance towards minor child, who has

now attained the majority, he would always be at liberty to file an appropriate application in that regard, which shall be considered in accordance with law.

Before parting with the judgment, this Court would like to place on record its appreciation for the assistance rendered by Mr. Aakash Singla, Advocate, who was appointed Amicus Curiae by this Court to represent respondents No. 1 and 2 in this case.

5.3.2020
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No