

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 202

Criminal Miscellaneous No.M-53785 of 2018
Date of Decision: March 03, 2023

Kamaljit Singh

..... PETITIONER(S)

VERSUS

Nachhatar Kaur @ Sikandar Kaur

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

. . .

PRESENT: - Mr. Ripudaman Singh, Advocate for Mr. Sanjeev Gupta,
Advocate for the petitioner.

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Tribhuvan Dahiya, J (Oral)

This petition has been filed against the order dated 15.10.2018 (Annexure P-7) vide which the respondent-wife was directed to file a list of property belonging to the petitioner-husband, while deciding the execution application dated 26.09.2017 (Annexure P-3) filed by her.

2. As per facts apparent on record, the amount of maintenance of Rs.2,000/- per month was granted to the respondent-wife by the Judicial Magistrate Ist Class, under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'Domestic Violence Act'). It was enhanced to Rs.3,000/- per month by the Additional Sessions Judge, S.A.S. Nagar, Mohali, while allowing her revision petition, vide order dated 13.11.2014 (Annexure P-2). Since the maintenance was not being paid, the respondent-wife filed an execution application for attachment and sale of property belonging to the petitioner-husband or, in the alternative, to send him behind bars for violating the orders of maintenance. The petitioner filed an application, dated 23.04.2018, for dismissing the execution application, which was decided by the Court, vide order dated 11.09.2018, holding that

the Execution application was maintainable in the Court of Judicial Magistrate. It was, however, held that the respondent was entitled to seek recovery of maintenance amount for a period of one year only, i.e., w.e.f. September 2016 to August 2017, and not from 13.07.2012, i.e., for a period of sixty-two months. Holding thus, the Magistrate, vide impugned order dated 15.10.2018, directed the respondent to file a list of properties belonging to the petitioner.

3. Learned counsel for the petitioner has contended that there is no provision in the Domestic Violence Act for attachment of property, therefore, the Executing Court could not have asked the respondent to provide a list of the petitioner's properties. He is, however, not able to refer to any provision of law which bars the Court from seeking list of properties.

4. Learned counsel for the petitioner has been heard and the case file perused.

5. To execute an order granting maintenance under Section 12 of the Domestic Violence Act, provisions of Section 28 of the Domestic Violence Act and Rule 6 (5) of 'The Protection of Women from Domestic Violence Rules, 2006' need to be considered which read as under:

Section 28. Procedure.-(1) Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.

Rule 6. Applications to the Magistrate.-(1) Every application of the aggrieved person under section 12 shall be in Form II or as nearly as possible thereto.

(2) to (4) xxx xxx

(5) The applications under section 12 shall be dealt with and the orders enforced in the same manner laid down under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974).

6. As apparent, Section 28 of the Act stipulates that all proceedings under Section 12 shall be governed by provisions of the Code of Criminal Procedure, 1973 (for short 'Cr.PC'). Further, Rule 6 (5) of the 2006 Rules, provide that applications under Section 12 of the Act shall be dealt with and the orders enforced in the manner laid down under Section 125 Cr.PC, which clearly provides, if any person fails without sufficient cause to comply with the order of maintenance, the Magistrate may for every breach of the order issue a warrant for levying the amount due in the manner provided for levying fines. In case the amount remains unpaid after execution of the warrant, he may sentence such person to imprisonment for a term which may extend to one month or until payment, if sooner made. To enforce the order of maintenance in the instant case also, the Magistrate is mandated to follow this procedure.

7. It also needs to be noted that the impugned order, dated 15.10.2018, passed by the Magistrate seeking list of the petitioner's properties is an interlocutory order, and cannot be challenged before this Court by filing the revision petition.

8. In view thereof, the petition stands disposed of with the observation that the Executing Court shall follow the procedure prescribed,

as mentioned hereinabove, for enforcing the order of maintenance granted to the respondent-wife.

9. As the execution application is pending since 2017, the Executing Court is directed to decide it expeditiously.

(Tribhuvan Dahiya)
Judge

March 03, 2023
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<u>Whether Speaking/ Reasoned:</u>	<u>Yes/ No</u>
<u>Whether Reportable:</u>	<u>Yes/ No</u>