



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on : 03.07.2023

+ **CRL.M.C. 3054/2022 & CRL.M.A. 12844/2022**

KARAN ARORA

.....Petitioner

versus

THE STATE (NCT OF DELHI) AND ANR..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Prashant Diwan & Mr. Mayank Verma, Advocates

For the Respondents : Ms. Priyanka Dalal, APP for the State
Mr. Rishabh Gupta, Adv. for R-2.

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HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed, *inter-alia*, praying as under:

“(a) Pass such directions to the subordinate courts in order to ensure their strict compliance with the directions passed by the Hon’ble Apex Court in judgment titled as ‘Rajnesh versus Neha and Another.’

(b) Set aside the order dated 24.06.2022 passed by the Ld. M.M. (Mahila Court), Shahdara, Karkardooma Courts, Delhi, wherein warrants of arrest were issued against the Petitioner / Husband.”

2. The learned Executing Court by its order dated 24.06.2022 (hereafter **‘the impugned order’**) had issued warrants of arrest against the petitioner in the sum of ₹50,000/-.



Brief Facts

3. The marriage between the petitioner and Respondent No. 2 was solemnized on 29.01.2016. It is stated that the Respondent No. 2 (wife) had instituted a case under Protection of Women from Domestic Violence Act, 2005 (hereafter '**DV Act**') against the present petitioner (husband) as well as the other family members seeking various interim reliefs, including monetary relief under the said Act. By order dated 16.01.2021, the learned Metropolitan Magistrate (hereafter '**MM**') had granted a monthly interim maintenance to the tune of Rs.50,000/-, to be paid to Respondent No. 2.

4. The petitioner being aggrieved by the said order, had challenged the same before the learned Sessions Judge on 12.02.2021, wherein the petitioner had also moved a separate application, seeking stay of the operation of the order dated 16.01.2021. It is stated that during the pendency of the said proceedings, neither the appeal nor the application was decided by the learned Sessions Judge. The petitioner had also approached this court by way of CrI. M.C No.3266/2021, whereby this court had directed the learned Sessions Judge to decide the matter expeditiously.

5. It is stated that, however, even after passing of the said order, the said appeal has not been decided till date and the petitioner is constrained to pay maintenance.

6. The Execution Petition was filed by Respondent No. 2 before the Court of learned MM (Mahila Court) Shahdara District,



Karkardooma District Court, Delhi. During the course of execution proceedings certain amounts are stated to have been paid by the petitioner to the Respondent No. 2. The matter was listed before the learned Executing Court, where the parties appeared from time to time. When the matter was listed on 24.06.2022, the petitioner did not appear, which led to issuance of impugned warrants of arrest.

7. Learned counsel for the petitioner submits that the learned MM has committed a grave error by straightaway issuing the warrants of arrest.

8. He submits that the petitioner has been regularly making the payments and has already paid a sum of ₹10,80,000/- to the Respondent No. 2, which clearly shows that he has no intention to bypass the directions passed by the learned Trial Court.

9. He further submits that due to some financial constraints in between, the petitioner was unable to pay the entire amount.

10. It is further submitted that it was only the first non-appearance before the learned Executing Court, which should not have led to issuance of the warrants of arrest.

11. Learned counsel further submits that the learned MM has failed to take into consideration the directions of the Hon'ble Apex Court with regard to the execution of the orders of maintenance. In the case of *Rajnish v. Neha and Another: (2021) 2 SCC 324*, it was categorically directed that the enforcement / execution of order of



maintenance is to be enforced as a money decree of Civil Court as per the provisions of the Code of Civil Procedure, 1908 (hereafter 'CPC').

12. He submits that the said procedure does not entail issuance of warrants at the very first instance of non-appearance.

13. It is further submitted that before proceeding to issue warrants of arrest, it is incumbent upon the Court to first issue a notice to the judgment debtor.

14. He further relies upon the judgment passed by the Hon'ble Apex Court in *Inder Mohan Goswami and Anr. vs. State of Uttaranchal and Ors.:(2007) 12 SCC 1*, to contend that the issuance of non-bailable warrants involves interference with personal liberty and it is only when the Court is satisfied that the person will not voluntarily appear before the Court, that such steps can be taken.

15. Learned APP along-with learned Counsel for Respondent No.2 states that the learned MM was correct in passing the impugned order as the petitioner did not appear on the said date and neither paid any amount that was due by that date. It is further submitted that since there is no stay operating on the execution proceedings it is well within the power of the executing court to issue such warrant in order to secure the presence of the accused.

Analysis

16. From the perusal of the petition, it is seen that the execution petition being Ex. No.223/2021 was filed by the Respondent No. 2



seeking execution of the order dated 16.01.2021 passed by the learned MM (Mahila Court) granting interim maintenance in favour of the complainant / Respondent No. 2.

17. The Hon'ble Apex Court in *Rajnish v. Neha and Another (supra)*, considered the various provisions under different acts such as Hindu Marriage Act, Family Courts Act, CPC, Code of Criminal Procedure and D.V. Act in relation to execution of the order granting maintenance to the complainant. The Hon'ble Apex Court also took note of various powers available with the concerned Court for enforcement of the order of maintenance. Considering all the circumstances and the various provisions as contained in different Acts with regard to the enforcement of order of maintenance, the following directions were issued :

“(e). Enforcement/Execution of orders of maintenance

132. For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28-A of the Hindu Marriage Act, 1955; Section 20(6) of the DV Act; and Section 128 of CrPC, as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly Sections 51, 55, 58, 60 read with Order 21.”

18. In terms of the directions issued by the Hon'ble Apex Court, any order of maintenance, thus, can be enforced under the provisions of the relevant Act as a money decree of Civil Court as per the provisions of CPC.

19. Under the provisions of the DV Act, Magistrate has power to direct the employer of the debtor to directly pay to the aggrieved



person or to deposit with the Court a portion of the wages or salary for the purpose of satisfaction of the maintenance amount.

20. Further, if any, amount of maintenance is not paid, the concerned Executing Court can follow the procedure under Order 21 of the CPC to ensure the execution. The decree holder in terms of Order 21 Rule 37 is also entitled to file an appropriate application for the execution of a decree, seeking arrest and detention of the judgment debtor and civil imprisonment, in case of non satisfaction of the decretal amount. In terms of the procedure provided, the Court on such application at first instance, issues a notice calling upon the judgment debtor to appear before the Court on the day specified in the notice and to show cause as to why he should not be committed to civil imprisonment. The Court, however, is within its power and may decide not to issue such notice and proceed with passing the order if it is satisfied on an affidavit being filed by the decree holder or otherwise that the judgment debtor with the object of delaying the execution is likely to abscond or leave the local limits of the jurisdiction of the Court. The Court is also empowered to issue warrant of arrest in case the judgment debtor does not appear pursuant to the notice issued under Order 21 Rule 37 of the CPC.

21. From the perusal of the impugned order, it is not clear whether the impugned order directing issuance of warrant of arrest was passed exercising power under Order 21 of the CPC or whether for the reason of non-appearance of the decree holder on the particular date.



22. It is seen from the record that the petitioner had not given any reason whatsoever for his non-appearance before the Court on the said date. It is also not denied by the petitioner that he was aware that the matter was listed before the concerned Court on 24.06.2022 and despite being aware neither did he file any application for exemption nor authorized any counsel to appear on his behalf on the said date.

23. The Courts are within its power to pass appropriate orders in case a party does not appear without any sufficient cause. Such orders can be in the nature of proceeding *ex-parte*, striking off the defence and if the Court is satisfied that such absence is with the object of delaying the proceedings, it is also empowered to pass an appropriate order issuing a warrant of arrest after recording such satisfaction. However, that depends on the nature of case and the stage of the proceeding.

24. It is not in doubt that any order for issuance of warrant of arrest is not to be passed unless it is absolutely necessary. The warrants, be it bailable or non-bailable has an effect of interference with the personal liberty of a person and unless the Court is satisfied that such order is necessary for the purpose of proceeding further in the case, the same should not be passed.

25. As discussed above, an order of maintenance has to be enforced under the provisions of the relevant Act as a money decree of a Civil Court. The Courts, therefore, are empowered to pass any order within the four corners of the applicable laws.



26. It is clear from the perusal of the impugned order that the Magistrate has failed to record any reason why a recourse to issuance of the warrant of arrest was taken in the present case. From the record of the proceedings as produced before this court, it is also apparent that the petitioner had been appearing before the learned Executing Court regularly. In such circumstances, the learned Executing Court, in my opinion, ought not to have proceeded with the issuance of warrant of arrest without recording any reasons as to why such recourse was taken.

27. During the course of the proceedings, this Court is informed that pursuant to the warrants, the petitioner has since appeared before the Court and the impugned warrant has already served its purpose.

28. In view of the law as discussed above and the fact that the petitioner has already appeared before the learned Executing Court, this Court considers it apposite not to pass any direction with regard to the prayer for setting aside the order dated 24.06.2022.

29. In so far as prayer 'a' seeking direction to the subordinate courts to ensure strict compliance with the directions passed by the Hon'ble Apex Court in ***Rajnesh v. Neha and Another***(*supra*) is concerned, it is not in doubt that the directions issued by the Hon'ble Apex Court are binding on all courts including the High Court. In order to ensure the compliance, the judgment passed by the Hon'ble Apex Court has already been circulated with all the concerned family courts dealing with the disputes in relation to the maintenance under the various



Acts. Therefore, this court does not feel it apposite to pass any further directions in that regard.

30. Needless to add, every party is entitled to approach the higher court in case it is felt that the directions passed by the Hon'ble Apex Court are not followed in its letter and spirit.

31. In view of the above, no orders are required to be passed at this stage.

32. The petition is disposed of in the above terms.

AMIT MAHAJAN, J

JULY 3, 2023

HK/KDK/SK

