

**CRR(F)-100-2022 (O&M)****1****221 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH****CRR(F)-100-2022 (O&M)****Date of decision: 30.09.2024****Karamjit Kaur****...Petitioner****Versus****Khushdeep Kaur****...Respondent****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR****Present:** Mr. Amaninder Singh Sekhon, Advocate  
for the petitioner.Mr. Paramjit Singh Brar, Advocate  
for the respondent.

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**HARPREET SINGH BRAR, J.**

1. The present revision petition has been preferred seeking quashing of impugned order dated 18.01.2022 passed by the learned Principal Judge, Family Court, Faridkot, whereby the learned Court below dismissed the objections raised by the petitioner and issued warrants of recovery against her property.

2. Briefly, the facts are that the respondent moved an application under Section 128 Cr.P.C. for the recovery of arrears of maintenance from her father, namely, Jagjit Singh. The petitioner, who is the sister of Jagjit Singh filed third party objections against the attachment of property measuring 16 Kanals 2 Marlas situated at Village Pehluwala, District Faridkot. The petitioner contended that Jagjit Singh already sold the land, which was ordered to be attached to her vide registered sale deed dated 23.05.2017 for the consideration of Rs. 22,14,000/-. A mutation bearing No.2673 was also entered and sanctioned in the name of the petitioner. The respondent had full knowledge of the sale of the land in question yet she got the said property



attached by concealing material facts. The learned Court rejecting the objections filed by the petitioner, issued recovery warrants of the arrears of maintenance to the tune of Rs. 3,95,500/- pending against Jagjit Singh by realising the amount as arrears of land revenue from the immovable property sold to the petitioner.

3. Learned counsel for the petitioner, inter alia, contends that the petitioner is the sister of Jagjit Singh i.e. judgment debtor. Jagjit Singh had sold the attached land vide registered sale deed dated 23.05.2017 for the consideration of Rs. 22,14,000/- and at the time of the sale, the petitioner was put in actual and physical possession of the said land. Resultantly, the petitioner became the owner and is in its exclusive possession. When the copy of the sale deed was presented for sanctioning of the mutation, the respondent through her mother had raised objection over the said mutation proceedings . However, the Sub Divisional Magistrate, Faridkot vide order dated 30.04.2018 sanctioned the mutation of sale in the name of the petitioner in the presence of the mother of the respondent. Thus, the mother of the respondent had full knowledge and notice of the sale of the land in question and she intentionally got the said property attached by concealing this fact from the executing court. Also since no petition against that order has been filed before any court, the mutation has become final, un-revocable and is liable to be executed in the eyes of law. Learned counsel further avers that the execution has been filed in the year 2018 and the sale deed and mutation of the land in dispute has been done in the year 2017. Hence, the proceedings initiated by the impugned order are liable to be set aside.

4. Per contra, learned counsel for the respondent argues that the



learned Lower Appellate Court has passed a well-reasoned judgment based on correct interpretation of the relevant provisions, and therefore, no interference is warranted by this court in the instant petition. Jagjit Singh and the petitioner, being siblings, have colluded with each other in order to defeat the rights of the minor respondent. Further, the sale of the land in question is hit by the provision of Section 52 of the Transfer of Property Act, 1882 and therefore, the property was rightly attached.

5. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the learned Court below took note of the failure of Jagjit Singh to clear the arrears of Rs. 3,95,500/- stemming from three different execution proceedings and ordered the property to be attached to recover the same.

6. A proper adjudication of the matter at hand would require a perusal of Section 39 of the Transfer of Property Act, 1882 which is reproduced below:

*Section 39- Transfer where third person is entitled to maintenance. Where a third person has a right to receive maintenance, or a provision for advancement or marriage, from the profits of immoveable property, and such property is transferred the right may be enforced against the transferee, if he has notice [thereof] or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.*

7. Curiously, Jagjit Singh transferred his share in the property to the petitioner during the pendency of proceedings under Section 127 Cr.P.C., which begs the inference that the transfer has been made to avoid the liability to clear the arrears due to the respondent. The application under Section 127

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Cr.P.C. for enhancement of maintainance allowance was filed by the repondent on 04.06.2016. The said application was contested by Jagjit Singh and finally the order dated 02.08.2018 was passed vide which the maintenance amount was enhanced from Rs. 3,500/- per month to Rs. 7,000/- per month. It is relevant to mention that the petitioner purchased the property in dispute in 2017 as is evident from the registered sale deed dated 23.05.2017. As such, since Jagjit Singh was the owner of the property during the pendency of proceedings under Section 127 Cr.P.C., thereby a charge was created on the same during the execution proceedings. Therefore, Jagjit Singh cannot be allowed to escape his liability by merely transferring his land to the petitioner i.e. his sister, moreso, during the pendency of proceedings under Section 127 Cr.P.C. just to avoid his liability. A two Judge bench of the Hon'ble Supreme Court *in Manmohan Gopal vs. The State of Chhatisgarh and another* **2023(14) Scale 684** held that the petitioner-father in-law and the husband were liable to clear the arrears of maintenance and directed six of the shops co-owned by them to be sold. Reliance can also be placed on the judgment rendered by a Division Bench of Allahabad High Court in *Hari Lal vs. Balwantia* **1998(4) R.C.R. (Civil) 23**.

8. Time and again, the issue of contumacious conduct on part of the husband qua realizing the arrears of maintenance has risen before this Court. The object and purpose behind granting maintenance under Section 125 Cr.P.C. is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of failure of marriage. At the same time, a just and careful balance must be struck to ensure that this provision does not degenerate into a weapon to punish the other spouse. However, the intention of the legislature

and the efforts of the judiciary are rendered superfluous if the husband refuses to make the payment as directed to the needy spouse. As such, the Courts wield the power to take the requisite steps to uphold the dignity of the orders passed by it and ensure its implementation.

9. In view of the discussion above, the present petition is dismissed and the impugned order dated 18.01.2022 passed by the learned Principal Judge, Family Court, Faridkot, is upheld.

10. Accordingly, the present petition is dismissed being bereft of any merit

11. Pending CRM(s), if any, are also disposed of accordingly.

(HARPREET SINGH BRAR)

JUDGE

30.09.2024

Ajay Goswami

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| Whether speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |