

Neutral Citation No. 2024:PHHC:072472

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

CRR(F) No. 153 of 2021 (O&M)

Date of decision : 22.05.2024

Kanwaljeet Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Arun Kumar, Advocate and
Mr. C. L. Verma, Advocate
for the petitioner.

Mr. A. S. Samra, AAG, Punjab.

Ms. Manju Goyal, Advocate &
Mr. T. P. S. Bawa, Advocate
for respondent Nos. 2 and 3.

MANISHA BATRA, J.(Oral)

1. The petitioner, by way of filing the present revision petition, is challenging the order dated 02.04.2021, as passed by the Additional Principal Judge, Family Court, Bathinda in **CRM-302-2020**, titled as **Mandeep Kaur and another vs. Kanwaljit Singh Bhalla**, whereby the petitioner was directed to undergo civil imprisonment from 02.04.2021 to 16.04.2021 on account of default of payment of arrears of amount of maintenance awarded to respondent Nos. 2 and 3.

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2. Though it is neither pleaded in the petition nor it is clearly made out from the impugned order, however, still so far this Court has been able to cull out from the record, the facts of the case are that previously a petition bearing No. MNT/82/2019 under Section 125 of Cr.P.C. had been filed by respondent Nos. 2 and 3 on 15.04.2017. The said petition had been allowed, vide order dated 14.02.2020 by the Family Court, Bathinda and respondent Nos. 2 and 3 were directed to be paid maintenance to the tune of Rs. 20,000/- per month each by the petitioner, who is their father. Since the petitioner was not paying the maintenance amount to the respondents, they filed aforesaid application seeking execution of above said order dated 14.02.2020. It is reflected from the impugned order that as the respondent had failed to pay the arrears of maintenance in compliance of order dated 14.05.2020, the Family Court had ordered for sending him to civil imprisonment from 02.04.2021 to 16.04.2021.

3. The present petition has been filed on the grounds and it has been argued by learned counsel for the petitioner that the impugned order dated 02.04.2021 is not sustainable in the eyes of law as while passing the same, the Family Court ignored that there was no civil prison in the area of Bathinda; that the order for grant of maintenance could be enforced only within the jurisdiction of Mohali and also that the petitioner was having no source of income due to termination of his services long back in December, 2017 and was himself living on the mercy of the friends and near relatives. Whereas his wife is serving as an officer in Punjab National Bank and is getting salary of more than Rs. 1 Lakh and is fully capable of maintaining

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the respondents. Therefore, it is urged that the impugned order be set aside and the revision petition be allowed.

4. *Per contra*, it is argued by learned counsel for respondent Nos. 2 and 3 that vide order dated 14.02.2020, passed in the aforesaid maintenance petition filed under Section 125 of Cr.P.C., the Family Court had directed the present petitioner to pay maintenance to the tune of Rs. 20,000/- per month each to respondent Nos. 2 and 3 by holding that the petitioner was liable to pay maintenance to them and the said order had been challenged only in 2024 by filing CRR(F)-41-2024, which is upheld by this Court. The impugned order was passed in a petition filed by them seeking execution of order dated 14.02.2020 and seeking payment of arrears of maintenance due in their favour. It is argued that the Family Court, Bathinda was simply executing the order dated 14.02.2020 and was not making any observation qua the legality of the said order as well as the fact that the petitioner had paid maintenance in any other proceeding or not. Therefore, it is argued that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable length and have also perused the material placed on record.

6. As discussed above, though the pleas taken in the petition are incomplete and vague as even the details of the order qua which the execution application bearing No. **CRM-302-2020** had been filed by the respondents before the Family Court have not been given, however, presuming that this order was passed while executing the final order of grant of maintenance passed in favour of respondent Nos. 2 and 3, it is to be seen

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as to whether the Family Court was justified in passing the impugned order for sending the petitioner to civil imprisonment for aforesaid period ?

7. Section 128 of Cr.P.C. pertains to the enforcement of order of maintenance. As per this provision, such an order can be enforced by the Magistrate in any place where the person against whom it made and the Magistrate being satisfied as to the identity of the parties and non-payment of the allowance, or as the case may be, the expenses, due. On a perusal of the impugned order, it is revealed that the executing Court had observed that the petitioner had failed to pay the arrears of maintenance. It is the case of the petitioner that the Family Court had passed the impugned order by ignoring the fact that he was unable to pay the same as he did not own any moveable or immoveable property and further that his services had also been terminated. In my considered opinion, the executing Court was not the appropriate forum, before which, such plea could have been taken by the petitioner, because if the petitioner wanted any alteration in the impugned order dated 14.02.2020, which was sought to be executed by the executing Court, then it was for him to challenge the same and take pleas as available to him in those proceedings and not in a petition seeking execution of final order of maintenance.

8. The executing Court by passing a detailed and well reasoned order had disposed of the execution petition by directing the petitioner to undergo civil imprisonment for the aforesaid period on account of his inability to make the payment of arrears of maintenance. No manifest injustice is shown to have caused to the petitioner, which requires

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interference by this Court. Accordingly, finding the petition devoid of any merit, the same is dismissed.

22.05.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No