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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRR(F)-887-2023****Reserved on: 01.05.2024****Pronounced on: 16.05.2024****Shamsher Singh****... Petitioner****Vs.****Sunita Rani****... Respondent****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Karan Nehra, Advocate
for the petitioner.

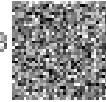
Mr. Ketan Antil, Advocate
for the respondent.

HARPREET SINGH BRAR, J.

1. The present revision petition has been preferred against the impugned order dated 03.03.2023 passed by the learned Family Court, Sonipat, vide which the objection application in execution application filed by the petitioner under Section 128, Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') was dismissed.

FACTUAL BACKGROUND

2. The marriage between the petitioner and the respondent was solemnized on 18.06.1981 and two children were born out of this wedlock. The children are now adults; the daughter works as an Assistant Professor in Government P.G. Nehru College, Jhajjar while the son is serving as Major in the Indian Army. However, matrimonial dispute ensued between the parties as the respondent-wife refused to fulfill her marital duties and ultimately,

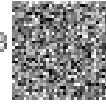
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stopped cohabitating with the petitioner since 01.12.2005. The petitioner has sent about Rs. 7,00,000/- to the respondent from 01.04.2013 to 31.03.2014 as decipherable from the bank records. In spite of the fact that the respondent having the qualification of M.A., B.Ed, the learned Court below, vide order dated 29.07.2016, granted her Rs. 10,000/- per month as maintenance under Section 125 Cr.P.C.

3. Thereafter, the respondent filed an Execution Petition on 18.03.2017 before learned Family Court, Sonipat, claiming an amount of Rs. 3,05,000/-, which was dismissed as withdrawn. However, the respondent filed another Execution Petition on 03.09.2021 before the learned Family Court claiming Rs. 5,20,000/- as the maintenance allegedly due from 16.04.2017. Consequently, the petitioner filed an objection petition contenting that the respondent is totally dependent on their daughter, as reflected by the affidavit submitted by the daughter to the college authorities. The respondent has been living with their daughter and enjoying facilities provided by the State government and has obtained the said decree by concealing this fact. However, the objection application was dismissed by the learned Family Court vide impugned order. Aggrieved by the same, the petitioner-husband has preferred the present petition.

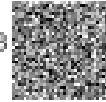
CONTENTIONS

4. Learned counsel for the petitioner, *inter alia*, contends that the learned Court below did not have the territorial jurisdiction to pass the impugned order as per the provisions of Section 128 Cr.P.C. The respondent

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was residing at Sonipat at the time of filing of application under Section 125 Cr.P.C. and accordingly invoked jurisdiction of the learned Family Court, Sonipat. However, the respondent is a permanent resident of Rohtak, which is also the place where the parties last cohabitated. The respondent has maliciously concealed her real address which is Quarter No. 7, Government P.G. Nehru College, Jhajjar where she is residing with their daughter to invoke the territorial jurisdiction of Family Court in Sonipat. The impugned order has been passed in view of order dated 29.07.2016 vide which the petitioner was directed to pay maintenance to the respondent. However, the order dated 29.07.2016 has been obtained by the respondent by concealing material facts and is not executable in the eyes of law. The respondent had mentioned her Sonipat address in all her pleadings, however, when the petitioner sent a registered post to the same it was returned on 14.02.2020 with remarks- 'Left-Return to Sender.'

5. Learned counsel further submits that the respondent has claimed reimbursement of medical bills several bills, showing herself to be a dependent on their daughter, who is an Assistant Professor at the said college. Furthermore, as per Section 125(3) Cr.P.C., no warrants for recovery of any amount granted as maintenance under Section 125 Cr.P.C. unless an application to this effect is made to the Court within one year from the date on which it became due. In the present case, the Execution Petition was filed on 03.09.2021 by the respondent, claiming arrears from 16.04.2017 to 16.08.2021. As such, the learned Court below has erred in dismissing the



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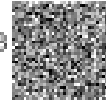
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objection petition filed by the petitioner vide order dated 03.03.2023 and ordering him to pay arrears accrued over 42 weeks. Reliance in this regard can be placed upon the judgment rendered by the Orrisa High Court in ***Ranjeet Kishan vs. Sumitra Kishan and another 2010 (32) R.C.R(Civil) 618***. Lastly, when an objection is made to such orders of execution, the learned trial Court answer it on merits. However, a perusal of the impugned order would indicate that no such findings on merits have been returned.

6. *Per contra* learned counsel for the respondent places reliance on the judgment rendered by the Hon'ble Supreme Court in ***Poongodi and another vs. Thangavel 2014(1) SCC(Cri) 361*** to argue that the right of the respondent-wife to recover arrears of maintenance is not extinguished with the lapse of time. Furthermore, learned counsel places reliance on the judgment rendered by the Kerala High Court in ***Aswathi and others v. Rajeesh Raman and others 2023 CriLJ 1582*** to contend that the an order for payment of maintenance granted under Section 125 and 127 Cr.P.C. can be enforced by the Court in any place where the person against whom such an order is made resides, which could also be outside the jurisdiction of the Court which passed the said order.

OBSERVATIONS AND ANALYSIS

7. Having heard the learned counsel for the parties and after perusing the record with their able assistance, it transpires that the respondent had filed an Execution Petition claiming Rs. 5,20,000/- as arrears of maintenance due from 16.04.2017 to 16.08.2021. The petitioner has



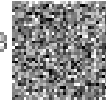
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already paid a sum of Rs. 1,00,000/- on 14.12.2022. The Hon'ble Supreme Court in ***Poongodi and another vs. Thangavel (supra)*** has held that while the Court shall not come to aid of those who have slept over their right to realise the amount of maintenance granted within one year from the date it became due, the remedy to recover the same by means of a civil action would still remain available. The liability to pay maintenance granted under Section 125 Cr.P.C. is of a continuing nature and the petitioner cannot be allowed to take advantage of the efflux of time and shrug off his responsibilities.

8. A two Judge bench of the Hon'ble Supreme Court in ***Kuldip Kaur vs. Surinder Singh and another 1989(1) R.C.R.(Criminal) 105***, speaking through Justice M.P. Thakkar, made the following observations:

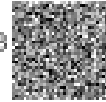
“6. A distinction has to be drawn between a mode of enforcing recovery on the one hand and effecting actual recovery of the amount of monthly allowance which has fallen in arrears on the other. Sentencing a person to jail is a 'mode of enforcement'. It is not a 'mode of satisfaction' of the liability. The liability can be satisfied only by making actual payment of the arrears. The whole purpose of sending to jail is to oblige a person liable to pay the monthly allowance who refuses to comply with the order without sufficient cause, to obey the order and to make the payment. The purpose of sending him to jail is not to wipe out the liability which he has refused to discharge. Be it also realised that a person ordered to pay monthly allowance can be sent to jail only if he fails to pay monthly allowance 'without sufficient cause' to comply with the order. It would indeed be strange to hold that a person who 'without reasonable cause' refuses to comply with the order of the Court to maintain his neglected wife or child would be absolved of his liability merely because he prefers to go to jail sentence of jail is no substitute for the recovery of the amount of monthly allowance which has fallen in arrears Monthly allowance is paid in order to enable the wife and child to live by providing with the essential



*economic wherewithal. Neither the neglected wife nor the neglected child can live without funds for purchasing food and the essential articles to enable them to live. Instead of providing them with the funds, no useful purpose would be served by sending the husband to jail. Sentencing to jail is the means for achieving the end of enforcing the order by recovering the amount of arrears. It is not a mode of discharging liability. The section does not say so. The Parliament in its wisdom has not said so commence does not support such a construction. From where does the Court draw inspiration for persuading itself that the liability arising under the order for maintenance would stand discharged upon an effort being made to recover it? The order for monthly allowance can be discharged only upon the monthly allowance being recovered. The liability cannot be taken to have been by sending the person liable to pay the monthly allowance, to jail. **At the cost of repetition it may be stated that it is only a mode or method of recovery and not a substitute for recovery.** No other view is possible...” (emphasis added)*

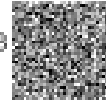
9. The objections raised by the petitioner qua the respondent availing facilities by showing herself as a dependent of their daughter and concealment of her real address, have been dealt with by the learned Court below vide the impugned order. Adequate explanation has been brought forth by the respondent to vitiate the allegations of fraud by stating that she stays with her daughter on account of the latter's ill-health and that her permanent residence remains in Sonipat. As far as the question of territorial jurisdiction is concerned, an order passed under Section 125 or 127 Cr.P.C. can be enforced by the Executing Court even if the party against whom such order is made resides outside its jurisdiction. A Co-ordinate bench of the Kerala High Court in ***Aswathi and others vs. Rajneesh Raman and others (supra)***, speaking through Justice A. Badharudeen, has held as follows:

“16. The law emerges from the above discussion is that when



the statute uses the word 'may', whether the same is to be understood as 'shall' or the statute makes it as 'mandatory' or 'discretionary' shall have to be understood with reference to the context in which the legislation was enacted and the consequence of reading the provisions as 'mandatory' or 'discretionary'. In the instant case, a harmonious and beneficial interpretation of the statutory wording would certainly throw light on the fact that as per the mandate of Section 128 of Cr.P.C, an order passed under Section 125 or 127 Cr.P.C can be enforced by the court in any place, where the person against whom the order is made and at the same time the court passed the order also could very well execute the order irrespective of the fact that the person against whom the order is made has been residing in a place, outside the jurisdiction of the court, which passed the order." (emphasis added)

10. The object and purpose behind granting maintenance 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. The Courts are required to conduct the maintenance proceedings while being alive to the legislative intent behind the provision under Section 125 Cr.P.C in its true spirit, which is to provide speedy assistance and social justice to women, children and infirm parents. The provisions of Section 125 Cr.P.C. were enacted as a measure to further social justice and protect dependent women, children and parents, which also falls within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India.



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11. A three-Judge Bench of the Hon'ble Supreme Court in ***Vimala (K.) v. Veeraswamy (K.) (1991) 2 SCC 375***, speaking through Justice Fatima Beevi, opined that as follows:

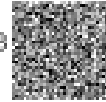
“3. Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing, and shelter to the deserted wife.”

12. A two-Judge Bench of the Hon'ble Supreme Court in ***Kirtikant D. Vadodaria v. State of Gujarat (1996) 4 SCC 479***, speaking through Justice Faizan Uddin, opined as follows:

“15. ... While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation.”

CONCLUSION

13. In view of the discussion above, this Court is of the considered view that the petitioner-husband cannot be absolved from paying the arrears of maintenance due towards the respondent-wife, even if, at times, their daughter is taking care of the respondent. While any dutiful child would take care of a parent in need, it is the legal and moral duty of the petitioner as a husband to maintain his wife. The learned Family Court, Sonipat has

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correctly assessed the facts to grant her a sum of Rs. 10,000/- per month as maintenance vide order dated 29.07.2016, and it would be in the interest of justice to execute the same.

14. After assessing all the material available on record, this Court finds that the learned counsel for the petitioner has been unable to indicate any perversity in the impugned order dated 03.03.2023, that would merit interference by this Court. Accordingly, the present petition stands dismissed.

15. Pending miscellaneous application(s), if any, shall also stand disposed of.

16.05.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No