



CRM-M-33308-2024

1

117

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-33308-2024

Date of decision: 17.07.2024

Rohit Verma

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. I.S. Chawla, Advocate for
for the petitioner

Mr. Subhash Godara, Addl. A.G., Punjab

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been preferred under Section 482, Cr.P.C. seeking setting aside of the impugned order (Annexure P-3) dated 12.10.2022, passed by the learned Additional Principal Judge, Family Court, Ludhiana whereby conditional warrants of arrest were issued against the petitioner as well as all subsequent proceedings arising out of the same.

2. The marriage between the petitioner and respondent No.2 was solemnized in accordance with Hindu rites and ceremonies. Three children were born out of the wedlock i.e. respondent No.3 to 5. Soon thereafter, matrimonial dispute ensued between the couple and respondent No.2 filed a petition under Section 125 Cr.P.C. seeking maintenance for herself and their minor children. During the said proceedings, respondent No.2 filed an application seeking interim maintenance which was allowed vide order dated 19.04.2019. Resultantly, the petitioner was directed to pay Rs. 75,000/- per month to the wife and their kids as interim maintenance from the date of the filing of the application. Subsequently, upon non-payment of the maintenance amount, respondent No.2 to 5 preferred an execution application for the recovery of the amount of arrears. In the execution proceedings, the petitioner was proceeded

**CRM-M-33308-2024****2**

against ex-parte due to his non-appearance. Respondent No. 2 to 5 supplied a list of properties owned by the petitioner and correspondingly, warrants of attachment of the said properties were issued vide order dated 16.12 .2021, which was followed by the issuance of conditional warrants of arrest vide impugned order dated 12.10.2022.

3. Learned counsel for the petitioner contends that the impugned order dated 12.10.2022 is liable to be set aside since the property of the petitioner has already been attached by the learned Court below. The recovery of maintenance amount has already been initiated by attaching the property of the petitioner therefore the issuance of conditional warrants of arrest is illegal and arbitrary. Furthermore, respondent No. 2 to 5 were given possession of the property against which the warrants of attachment were issued and the value of the said property is much higher than the maintenance amount owed. Learned counsel further argues that the non-appearance of the petitioner in the execution proceedings was unintentional as he was already embroiled in several income tax cases and had only faltered in payment of the arrears of maintenance because he was under heavy financial burden. The petitioner is ready and willing to join the proceedings and has already filed an application for setting aside the ex parte order which is pending consideration before the learned Court below. Lastly, learned counsel submits that the petitioner is unable to appear in another criminal case due to the order of the conditional warrants of arrest, and prays for the same to be set aside.

4. I have heard learned counsel for the petitioner and carefully perused the record with his able assistance. However, for proper adjudication of the case at hand, it is pertinent to advert to Section 125 Cr.P.C., which deals

with providing maintenance to wife, children and parents.



CRM-M-33308-2024

3

5. 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 fall within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India.

6. 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.”

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.”

7. There is a general tendency on the part of the wife to amplify her



CRM-M-33308-2024

4

needs and the husband to conceal his actual income, making it difficult to determine the earning capacity of the rival claimants with exactitude. The rival claimants must scrupulously bring on record their actual respective earning capacities in order for the Court to arrive at quantum of maintenance which is just and fair in terms of principle of equistatus. The quantum of maintenance must be justifiable and realistic to provide succour to the dependent spouse and also to avoid occurrence of the two extremes of the maintenance being either paltry or extravagant, ensuring that neither of the two is reduced to a life of penury. The adequacy of the maintenance allowance has to be determined by the yardstick of the dependent spouse being able to lead a life of reasonable comfort.

8. However, for proper adjudication of the present case, it is pertinent to refer to the relevant provisions under Section 125, Cr.P.C., which is extracted below:

Section 125. Order for maintenance of wives, children and parents.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each months allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made.

9. The distinction between the mode of enforcing recovery and effecting actual recovery of the amount of maintenance which has fallen in arrears in the context of the provisions under Section 125(3) of Cr.P.C. was discussed in the case of ***Smt. Kuldip Kaur vs. Surinder Singh and anr. (1989)***



CRM-M-33308-2024

5

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)*

10. A close scrutiny of Section 125(3) Cr.P.C. reveals that in case of breach of the order directing payment of maintenance, the Magistrate may issue warrant for levying the amount due in the manner provided for levying fines as prescribed under Section 421 of Cr.P.C. and the Magistrate may also sentence such person for the whole or any part of each month allowance. Both of these are methods to impel the person against whom execution proceedings have been initiated to pay the maintenance amount which has fallen in arrears. However,



CRM-M-33308-2024

6

the employment of these modes of enforcing recovery is not to be confused with the actual realisation of the maintenance amount due or as a satisfactory substitute for the latter. The ambit and scope of the powers as devolved by Section 125(3) Cr.P.C., are not to penalize or punish the transgressing party, who hasn't complied with the order, but rather, to drive him to a situation where he is put under an obligation to pay the monthly allowance and makes the actual payment of arrears. The intent of the legislature in this regard is further made explicit by the provision which allows for sentencing the person, who fails without sufficient cause to comply with the order without sufficeint cause, for the whole or any part of each month's allowance for the maintenance, including interim maintenance remaining unpaid. The sentence may extend to imprisonment for a term up to one month or until payment is made, if sooner. The provisions under Chapter IX of Cr.P.C. are in the nature of a beneficent legislation. The purpose and object is to provide a simple and speedy remedy, and to ensure that the deserted wife, children and parents are not left without any means for subsistence.

11. At this juncture, it would be profitable to cite the judgment delivered by a Division Bench of the Rajasthan High Court in ***In Re A Ref. Under Section 395 Cr.P.C., 1973 By District and Sessions Judge, Pali vs. Unknown 2022 (1) R.C.R. (Criminal) 435***, wherein the following was observed:

“7. Firstly, we consider the plain language of Section 125(3) Cr.P.C., 1973 which provides that "if a person ordered to pay maintenance, fails without sufficient cause to comply with the order, the Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines and may sentence such person for the whole or any part of each month's allowance for the maintenance....., to imprisonment for a term which may extend to one month or until payment if sooner made." Splitting the provision for better understanding, it becomes clear that it operates in four parts:



CRM-M-33308-2024

7

- (i) Non-compliance of the order of maintenance by the person directed to pay monthly maintenance,
- (ii) Every breach of the order,
- (iii) Issuance of warrant for levying the amount due in the manner provided for levying fines and
- (iv) Sentencing such person for the whole or any part of each month's allowance, imprisonment for a term which may extend to one month.

Meaning thereby, if the person ordered to make payment of maintenance fails to do so, the Magistrate shall be empowered to issue warrant for recovery of the maintenance due in the manner provided for levying fines and may also sentence such person for the whole or any part of each month's allowance to imprisonment for a term which may extend to one month. Clearly thus, every single breach of the monthly maintenance order gives rise to a distinct cause of action calling for issuance of a warrant for levying of the amount and a discretion is given to the Magistrate that in the event of non-payment, the person ordered may be sentenced to imprisonment for a term which may extend to one month for each month's default. **The clear intention of the legislature is that as the order of maintenance is stipulated to provide maintenance on a monthly basis, every breach thereof is an infringement for which a separate warrant for levying fine is to be issued and in addition thereto, the person so ordered can be sentenced to imprisonment for a term which may extend to one month concurring with every breach.** The application for recovery of the maintenance amount can be filed within a period of 12 months from the date it becomes due. The section does not provide that the claimant must file separate applications for recovery of each month's allowance.” (emphasis added)

12. A perusal of the impugned order passed by the learned Family Court makes it evident that despite attachment of the property of the petitioner, he has failed to appear before the Court and make the actual payment of arrears. It is further observed by the learned Family Court that the petitioner cannot feign ignorance in the present case as he has challenged the order vide which interim maintenance was granted to respondents No.2 to 5. As a result, the conditional warrants of arrest were issued against the petitioner. The cardinal rule of interpretation of statutes is to read the statute literally and give the words their grammatical and natural meaning. If that is contrary to, or inconsistent with, any express intention or declared purpose of the statute, or if it would attract any absurdity, repugnancy or inconsistency, the grammatical sense must

CRM-M-33308-20248

then be modified, extended or abridged, so far as to avoid such an inconvenience, but no further (*See: Craies on Statute Law, Seventh ed. Page 83-85*).

13. A perusal of subsection (3) of Section 125, Cr.P.C. discloses that the Magistrate is empowered to issue warrant for recovery of the maintenance due in the manner provided for levying fines and may also sentence such person for the whole or any part of each month's allowance to imprisonment. The word “and” has to be given its plain and literal meaning and as such, has to be interpreted as a conjunctive term. Since the overarching intent of Chapter IX of Cr.P.C. is to maintain the neglected spouse and minor children and provide them with sufficient monthly allowance to enable them to lead a life of dignity, giving the word “and” its literal meaning would only better achieve the objective of recovering the amount of arrears and facilitate the payment of maintenance. Consequently, the averment of the learned counsel for the petitioner that issuance of conditional warrants of arrest is unwarranted after the property of the petitioner has already been attached, does not merit acceptance.

14. Accordingly, the present petition is dismissed being bereft of any merits.

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

17.07.2024

Ajay Goswami

(HARPREET SINGH BRAR)

JUDGE

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No