



CRM-M-34360-2019

1

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

CRM-M-34360-2019

Date of decision: 16.09.2024

Rahul

...Petitioner

Versus

State of Punjab and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: None for the petitioner.

Mr. Sunil Agnihotri, Advocate  
for respondent No.2.

\*\*\*

**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-5) dated 11.07.2019, passed by the learned Principal Judge, Family Court, Mukerian, Hoshiarpur whereby the application moved by the petitioner for setting aside ex-parte order was dismissed and conditional warrants were issued against him as well as all subsequent proceedings arising out of the same.

2. The marriage between the petitioner and respondent No.2 was solemnized on 12.07.2011 in Australia. The couple visited India in 2013 and on 09.02.2013 again performed the requisite matriomial rites and rituals in India. However, soon thereafter, matrimonial dispute ensued between the couple and they obtained divorce by mutual consent from the Federal Circuit Court of Australia vide order dated 22.01.2015 (Annexure P-2). Later on, respondent No.2 filed a petition under Section 125 Cr.P.C. seeking

maintenance for herself, which was allowed vide order 05.05.2016 and



maintainance to the tune of Rs. 15,000/- per month was awarded to respondent No.2. The petitioner was proceeded against ex-parte due to his non-appearance in the said maintainance proceedings (Annexure P-3). Subsequently, once the petitioner returned to India, he moved an application (Annexure P-4) for setting aside the ex-parte order. Correspondingly, the said application filed by the petitioner was dismissed vide impugned order dated 11.07.2019 and conditional warrants were issued against him for 03.10.2019.

3. Learned counsel for the petitioner contends that the impugned order dated 11.07.2019 is liable to be set aside since the petitioner was residing in Australia when the maintainance proceedings were initiated against him. The petitioner was never served at the time of the filing of the petition under Section 125, Cr.P.C. and the impugned order was brought to his attention only after he had returned to India. Learned counsel further argues that the non-appearance of the petitioner in the maintainance proceedings was unintentional and the impugned order has been passed without giving effective opportunity to the petitioner to lead evidence. The petitioner is ready and willing to join the proceedings and the learned Court below has wrongly dismissed the application for setting aside the ex parte order.

4. I have heard learned counsel for the petitioner and carefully perused the record with his able assistance. 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. Orders 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.*

5. 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) 1 SCC 405***, wherein a 2 Judge bench of the Hon'ble Supreme Court, 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*



CRM-M-34360-2019

4

*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)*

6. 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, 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.

7. A perusal of the impugned order passed by the learned Family Court makes it evident that despite filing an application for setting aside the *ex-parte* order, the petitioner failed to appear before the learned Court below. Further, there is nothing on record to communicate that the petitioner is willing to make the payment of arrears of maintenance. Hence, the application for setting aside the *ex-parte* order was dismissed and the conditional warrants were issued against the petitioner. Moreover, the petition under Section 125 Cr.P.C. was instituted on 11.08.2015 and decided on 05.05.2016. A perusal of the maintenance order reveals that petitioner was duly served yet he did not appear before the learned trial Court to contest the case. The petitioner cannot feign ignorance in the present case since he moved an application for setting aside the *ex-parte* order on 05.09.2018, which was finally dismissed vide impugned order dated 11.07.2019. However, throughout the intervening period, the petitioner remained absent from the proceedings. Maintenance proceedings have to be understood in the backdrop of the overarching intent of Chapter IX of Cr.P.C., which 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,

Consequently, the averment of the learned counsel for the petitioner that



issuance of conditional warrants is unwarranted, does not merit acceptance.

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

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

(HARPREET SINGH BRAR)  
JUDGE

16.09.2024

Ajay Goswami

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