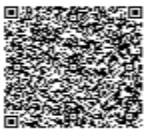


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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-37961-2024 (O&M)
Date of decision: 06.08.2024

Arun Kumar

... Petitioners

Vs.

Neha Bansal and another

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Naveen Bawa, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been preferred under Section 528 of the
Bhartiya Nyaya Nagrik Suraksha Sanhita, 2023 (for short 'BNSS') against
the impugned order dated 03.07.2024 (Annexure P-5) passed by learned
Additional Principal Judge, Family Court, Ludhiana, whereby right of the
petitioner to cross-examine respondent No.1 has been curtailed, in the
proceedings under Section 125 of the Code of Criminal Procedure, 1973 (for
short 'Cr.P.C.').

2. The marriage between the petitioner and respondent No.1 was

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solemnized on 09.05.2015 in accordance with Hindu rites and rituals. Out of the said wedlock, one male child i.e. respondent No.2 was born. However, due to temperamental differences, marital discord ensued and the respondents filed a petition under Section 125 Cr.P.C. seeking maintenance. Consequently, learned Family Court awarded Rs.7,000/- per month as interim maintenance to respondent No.1 vide order dated 03.04.2024 (Annexure P-3), in addition to the sum Rs.5,000/- per month awarded to respondent No.2 vide order dated 11.01.2024. The matter was then fixed for 06.05.2024 for cross examination of PW1-Neha Bansal i.e. respondent No.1, subject to clearance of arrears by the petitioner. On the request of the petitioner, the matter was adjourned for 03.07.2024 on the same condition. However, since the arrears of interim maintenance were not cleared by the petitioner, his right to cross-examine PW1-Neha Bansal i.e. respondent No.1 was curtailed vide impugned order dated 03.07.2024 (Annexure P-5).

3. Learned counsel for the petitioner, *inter alia*, contends that the learned trial Court fell into grave error by curtailing the petitioner's right to cross-examine respondent No.1. Despite the petitioner's failure to clear the arrears of maintenance, the respondents retained the remedy to initiate execution proceedings. The curtailment of the petitioner's right to cross-examine would be detrimental to the fair trial of the matter at hand, as it

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would take away the opportunity to discredit the narrative put forward by respondent No.1 from the petitioner and strengthen his defence.

4. I have heard learned counsel for the petitioner and perused the record of the case with his able assistance.

5. A perusal of the order dated 06.05.2024 (Annexure P-4) indicates that learned trial Court had categorically held that right of the petitioner to cross examine respondent No.1 would be curtailed if he fails to clear the arrears of maintenance by the next date of hearing. Since the petitioner failed to clear the dues, his right to cross-examine respondent No.1 was curtailed by passing impugned order dated 03.07.2024 (Annexure P-5).

6. Time and again, the issue of contumacious conduct on part of the husband qua clearance of arrears of maintenance awarded, 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.

7. A close scrutiny of Section 125(3) 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), 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.

8. However, to compel the defaulting party to clear the arrears in order to truly grant relief to the needy spouse and honour the interim order passed by the Court, steps like striking off defence or curtailing right to cross-examination may be taken. A Division Bench of this Court in ***Mohinder Verma Vs. Sapna, 2014 (24) R.C.R (Civil) 380***, speaking through Justice Ajay Kumar Mittal, has observed as follows:

“8...Where the spouse who is to pay maintenance fails to discharge the liability, the other spouse cannot be forced to

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adopt time consuming execution proceedings for realising the amount. Court cannot be a mute spectator watching flagrant disobedience of the interim orders passed by it showing its helplessness in its instant implementation. It would, thus, be appropriate even in the absence of any specific provision to that effect in the Act, to strike off the defence of the erring spouse in exercise of its inherent power under Section 151 of the Code of Civil Procedure read with Section 21 of the Act rather than to leave the aggrieved party to seek its enforcement through execution as execution is a long and arduous procedure. Needless to say, the remedy under Section 28A of the Act regarding execution of decree or interim order does not stand obliterated or extinguished by striking off the defence of the defaulting spouse. Thus, where the spouse who is directed to pay the maintenance and litigation expenses, the legal consequences for its non-payment are that the defence of the said spouse is liable to be struck off.” (emphasis added)

9. Pertinently, a two Judge Bench of the Hon’ble Supreme Court in the case of ***Rajnesh Vs. Neha and another, (2021) 2 SCC 324*** has relied upon its judgment rendered in ***Kaushalya Vs. Mukesh Jain, (2020) 17 SCC 822*** to categorically hold that the Court may proceed to strike off the defence of the respondent if the errant spouse, in spite of being given a reasonable opportunity to participate in the trial, appears to be unjustly prolonging the it. Reliance in this regard can also be placed on the judgment of this Court in ***Rani Vs. Parkash Singh, AIR 1996 P&H 175***. In fact, a Division Bench of the Delhi High Court in ***Smt. Santosh Sehgal Vs. Shri Murari Lal Sehgal, AIR 2007 Del 210*** has gone to the extent of holding that an appeal filed by



the wife deserves to be allowed in view of the negligence displayed by the husband towards clearance of arrears of maintenance.

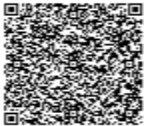
10. Be that as it may, such drastic steps may only be taken as a last resort, when the Court is convinced that the errant spouse is willfully abnegating his liability. The Court must not overlook such deliberate disobedience, as the same can be deterrent to the cause of justice and defeats the purpose of granting maintenance under Section 125 Cr.P.C.

11. Adverting to the case at hand, the petitioner has undertaken to clear the arrears of maintenance by 04.09.2024. As such, this Court does not find the need to curtail his right to cross examine the respondent. Moreover, efforts must be made to ensure that, as far as possible, the parties involved are allowed to present the best available evidence as that would lend credibility to the judicial proceedings.

12. Accordingly, the present petition is disposed of in the following terms:

- i. In case the petitioner clears the entire arrears of maintenance by 04.09.2024, learned Additional Principal Judge, Family Court, Ludhiana is directed to give two effective opportunities to the petitioner to cross-examine respondent No.1.
- ii. In case the petitioner fails to clear the arrears, as undertaken by

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him, the impugned order dated 03.07.2024 (Annexure P-5) passed by learned Additional Principal Judge, Family Court, Ludhiana, shall enure.

13. All the pending miscellaneous application(s), if any, shall also stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

06.08.2024
vishnu

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No