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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-40476-2024 (O&M)
Date of decision: 22.08.2024

Manjinder Singh

... Petitioner

Vs.

Ramandeep Kaur and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vipin Kumar Sharma, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been preferred under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 against the order dated 11.07.2024 (Annexure P-5) passed by learned Principal Judge, Family Court, Ferozepur, vide which the application seeking setting aside the order dated 20.10.2023 (Annexure P-2), whereby right of the petitioner to cross-examine AW1 and AW2 has been curtailed, in proceedings under Section 125 Code of Criminal Procedure, 1973 (for short 'Cr.P.C.').
2. The brief facts, as alleged, are that the marriage between the

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petitioner and respondent No.1 was solemnized on 07.10.2017 according to Hindu rites and rituals. Out of this wedlock, one male child namely Harnavbir Singh-respondent No.2 was born. However, due to temperamental differences, marital discord ensued and the respondents filed an application under Section 125 Cr.P.C. seeking maintenance and vide order dated 06.10.2022, learned Family Court awarded interim maintenance in favour of the respondents and the matter was fixed for 19.11.2022 for making the payment of interim maintenance and evidence of the respondents. Thereafter, respondent No.1 examined herself as AW1 and one Gurmeet Singh as AW2 on 25.05.2023 and their cross-examination was deferred to 24.08.2023 subject to clearance of arrears towards interim maintenance by the petitioner, but he did not pay a single penny and even despite availing number of opportunities, cross-examination of AW1 and AW2 was not conducted, therefore, his right to cross-examine the said witnesses was treated as Nil vide order dated 20.10.2023. Thereafter, the petitioner filed an application for setting aside the order dated 20.10.2023, but the same was dismissed vide impugned order. Feeling aggrieved, the petitioner has approached this Court by way of filing the present petition.

3. Learned counsel for the petitioner, *inter alia*, contends that learned trial Court has fallen into grave error by curtailing the right of the petitioner to cross-examine respondent No.1/AW1 and AW2, which would be

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detrimental to fair trial of the matter at hand, as it would take away the opportunity to discredit the narrative put forward by respondent No.1 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 order dated 20.10.2023 (Annexure P-2) and the impugned order dated 11.07.2024 (Annexure P-5) indicates that learned trial Court curtailed right of the petitioner to cross-examine respondent No.1/AW1 and AW2, as despite availing sufficient opportunities, he failed to make the payment of arrears of interim maintenance and learned Family Court did not find the ground taken in the application seeking setting aside the order dated 20.10.2023 (Annexure P-2) as tenable, as neither the petitioner paid any amount of interim maintenance to the respondent nor he conducted cross-examination of respondent No.1/AW1 and AW2 and as such, vide impugned order dated 11.07.2024, dismissed the said application.

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) 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.

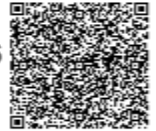
8. However, to compel the defaulting party to clear the arrears in order to truly grant relief to the needy spouse and honour the interim order passed by the Court, steps like striking off defence or curtailing right to cross-examination may be taken. A Division Bench of this Court in



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 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 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.

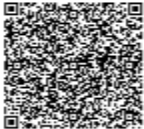
10. Be that as it may, such drastic steps may only be taken as a last resort, when the Court is convinced that the errant spouse is willfully abnegating his liability. The Court must not overlook such deliberate disobedience, as the same can be deterrent to the cause of justice and defeats the purpose of the provision 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 pending upto 31.08.2024 by 21.09.2024. As such, this Court does not find the need to curtail his right to cross-examine respondent No.1/AW1 and AW2. 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: -

- (a) In case the petitioner clears the entire arrears of maintenance by 21.09.2024, learned Principal Judge, Family Court, Ferozepur is directed to give two effective opportunities to him to cross-examine respondent No.1/AW1 and AW2, however, subject to

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last opportunity.

- (b) In case the petitioner fails to clear the arrears upto 31.08.2024, as undertaken by him, by 21.09.2024, the impugned order dated 11.07.2024 (Annexure P-5) passed by learned Principal Judge, Family Court, Ferozepur, shall enure.

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

[HARPREET SINGH BRAR]
JUDGE

22.08.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No