



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

CRM-M-41216-2024 (O&M)
Date of decision: 23.08.2024

Bhagwan Singh

....Petitioner

Versus

Manali Gawar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kunal Dawar, Advocate
for the petitioner.

HARPREET SINGH BRAR, J.

1. The present petition has been preferred under Section 482 of the Code of Criminal Procedure, 1973 (now- Section 528 of the Bhartiya Nagrik Suraksha Sanhita, 2023) seeking quashing of impugned order dated 18.07.2024 (Annexure P-13) passed by the learned Additional Principal Judge, Family Court, Gurugram, whereby the application moved by the petitioner seeking recalling of orders dated 27.10.2023 (Annexure P-6) and 26.02.2024 (Annexure P-7), was dismissed.

2. Briefly, the facts are that the marriage between the son of the petitioner i.e. respondent No.3 and respondent No.1 was solemnized on 24.04.2012 in accordance with Hindu rites and rituals, and a son i.e. respondent No.2 was born out of this wedlock. However, matrimonial discord ensued and on 08.01.2016, respondent No. 1 moved to her parental home in Mathura, along with respondent No.2. Respondents No.1 and 2 moved an application under Section 125 Cr.P.C. and vide order dated 30.07.2022 (Annexure P-2), the learned Family Court directed respondent No.3 to pay Rs. 20,000/- per month to respondent No.1 and Rs. 30,000/- to respondent No.2 as interim



maintenance. Aggrieved by the same, respondent No.3 preferred a revision before this Court, which was dismissed vide order dated 25.05.2023 (Annexure P-3). Respondent No.3 also moved a Special Leave Petition bearing No. 28681/2023 before the Hon'ble Supreme Court against order dated 25.05.2023 (Annexure P-3), however, the same was dismissed vide order dated 09.10.2023 (Annexure P-4).

3. Subsequently, respondents No. 1 and 2 moved an execution petition against respondent No.3. Respondent No.1 placed on record a copy of sale deed dated 21.01.2017 made in favour of respondent No.3 and his family members. Accordingly, the learned Family Court, vide impugned order dated 27.10.2023 (Annexure P-6) issued warrants of recovery, authorizing the Collector to realize the maintenance amount of Rs. 19,00,000/- in accordance with Section 421 Cr.P.C. Thereafter, a report was received from Tehsildar, Mathura which reflected that the share of respondent No.3 in the residential house has been purchased by the petitioner during the pendency of proceedings under Section 125 Cr.P.C. Consequently, the learned Family Court passed impugned order dated 26.02.2024 (Annexure P-7) whereby the Collector was directed to execute warrants qua the property.

4. Learned counsel for the petitioner, *inter alia*, contends that the petitioner is the father-in-law of respondent No.1. The petitioner had purchased a residential house in village Navada, Mathura (hereinafter 'the property') vide sale deed dated 21.01.2017 (Annexure P-14) for a consideration of Rs. 1,04,20,000/-. While the property was registered in the names of the petitioner, his wife and three sons (including respondent No.3), the payment qua the same was made by the petitioner alone. Respondent No.3 has not contributed anything towards the consideration for the purchase of the property. The



learned Court below has fallen into grave error by attaching the property of the petitioner towards realising the arrears of maintenance as the liability to pay the same rests solely on the shoulders of respondent No.3, being the husband. Moreover, orders dated 27.10.2023 (Annexure P-6) and 26.02.2024 (Annexure P-7) were passed without affording an opportunity to be heard to the joint co-owners, including the petitioner. Respondent No.1 ought to have filed a civil suit to declare that the transfer of share in the property was collusive and void, however, she has failed to do the same. As such, since respondent No.3 does not have any right in the property, the same cannot be attached for realization of arrears of maintenance. Reliance in this regard is placed on the judgment rendered by the Allahabad High Court in ***Uma Pati Tiwari vs. State of U.P. and others 2007(2) R.C.R.(Criminal) 991***, by the Karnataka High Court in ***Abdul Khader and others vs. Tasleem Jamela Agadi and others 2024(1) Crimes 52*** and by the Telangana High Court in ***Shaik Masthan Sab vs. Mallika Begum and others 2016(2) ALT (Criminal) 93***.

5. Having heard learned counsel for the petitioner and after perusing the record with his able assistance, it transpires that the learned Court below took note of the failure of respondent No.3 to clear the arrears of Rs. 19,00,000/- for the period w.e.f. 25.09.2019 to 24.11.2022 and ordered the property to be attached to recover the same.

6. A proper adjudication of the matter at hand would require a perusal of Section 39 of the Transfer of Property Act, 1882 which is reproduced below:

Section 39- Transfer where third person is entitled to maintenance.

Where a third person has a right to receive maintenance, or a provision for advancement or marriage, from the profits of immoveable property, and such property is transferred the right



may be enforced against the transferee, if he has notice [thereof] or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

7. Curiously, respondent No.3 transferred his share in the property to the petitioner during the pendency of proceedings under Section 125 Cr.P.C., which begs the inference that the transfer has been made to avoid the liability to clear the arrears due to respondents No. 1 and 2. While the petitioner claims that respondent No.3 did not make any payment towards consideration amount for purchasing the said property but the fact that he was made co-sharer in the property as evidenced by the registration, cannot be overlooked by the Court below. As such, since respondent No.3 was a co-sharer in the property during the pendency of proceedings under Section 125 Cr.P.C., thereby a charge was created on the same during the execution proceedings. Therefore, respondent No.3 cannot be allowed to escape his liability by merely transferring his share to the petitioner i.e. his father on a piece of paper, moreso, during the pendency of proceedings under Section 125 Cr.P.C. just to avoid his liability. A two Judge bench of the Hon'ble Supreme Court in ***Manmohan Gopal vs. The State of Chhatisgarh and another 2023(14) Scale 684*** held that the petitioner-father-in-law and the husband were liable to clear the arrears of maintenance and directed six of the shops co-owned by them to be sold. Reliance can also be placed on the judgment rendered by a Division Bench of Allahabad High Court in ***Hari Lal vs. Balwantia 1998(4) R.C.R.(Civil) 23***.

8. Time and again, the issue of contumacious conduct on part of the husband qua realizing the arrears of maintenance 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 if the husband refuses to make the payment as directed to the needy spouse. As such, the Courts wield the power to take the requisite steps to uphold the dignity of the orders passed by it and ensure its implementation.

9. In view of the discussion above, the present petition is dismissed and the impugned order dated 18.07.2024 (Annexure P-13) passed by the learned Additional Principal Judge, Family Court, Gurugram is upheld.

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

(HARPREET SINGH BRAR)
JUDGE

23.08.2024
Neha

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