

Neutral Citation No. 2024:PHHC:070598

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

CRR(F)-1363-2023 (O&M)
Date of decision : 22.05.2024

Kanwaljeet Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. C. L. Verma, Advocate and
Mr. Aditya Dassaur, Advocate for the petitioner.

Mr. A. S. Samra, AAG, Punjab.

Ms. Manju Goyal, Advocate &
Mr. T. P. S. Bawa, Advocate
for respondent Nos. 2 and 3.

MANISHA BATRA, J.(Oral)

1. The petitioner, by way of filing the present revision petition, is challenging the order dated 06.09.2023, as passed by the Additional Principal Judge, Family Court, Bathinda in **CRM-386-2021**, titled as **Mandeep Kaur and others vs. Kanwaljit Singh Bhalla**, whereby the petitioner was directed to undergo civil imprisonment for a period of 30 days on account of default of payment of arrears of amount of maintenance pertaining to the period from 30.04.2020 to 14.04.2021, amounting to Rs. 4,53,676/- .

2. Brief facts relevant for the purpose of disposal of the instant petition are that the respondent Nos. 2 and 3 along with their mother had

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filed a maintenance petition bearing No. MNT/82/2019 on 15.04.2017 under Section 125 of Cr.P.C. seeking maintenance from the petitioner, who is their father. The said petition had been allowed, vide order dated 14.02.2020, which was passed ex-parte as against the petitioner by the Additional Principal Judge, Family Court, Bathinda and he was directed to pay a sum of Rs. 20,000/- per month each to respondent Nos. 2 and 3 as maintenance. Since the petitioner failed to abide by the order dated 14.02.2020, therefore, respondents were compelled to file a petition seeking execution of the said order. It is reflected from the impugned order dated 06.09.2023 that the petitioner appeared in response to the notice issued in the execution application and submitted written arguments and made oral submissions to the effect that he was not able to pay any maintenance to the respondents as he did not own any moveable or immoveable property and further that he had already paid an amount of Rs. 5 Lakhs towards interim maintenance in a petition under the provisions of the Protection of Women from Domestic Violence Act, 2005 (*for short 'DV Act'*). The Family Court, while rejecting the pleas so taken by the petitioner, observed that since the petitioner was not making payment of arrears of amount of maintenance payable for the period from 30.04.2020 to 14.04.2021, therefore, he was liable to be sent to civil imprisonment and, hence, by passing the impugned order dated 06.09.2023, the petitioner was directed to be sent to civil imprisonment for a period of 30 days.

3. The impugned order has been challenged by the petitioner on two grounds; firstly that since there was no civil prison within the jurisdiction of the Courts at Bathinda, therefore, no order for sending him to

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civil imprisonment could have been passed and secondly that he was having no source of income due to termination of his services way back in December, 2017 and hence, he was not in a position to make payment of the arrears of maintenance to the respondents.

4. It is argued by learned counsel for the petitioner that due to above stated reasons, the impugned order does not deserve to be sustained and is liable to be set aside and the revision petition deserves to be allowed, especially in view of the fact that the respondents are living with their mother, who is serving as an Officer in Punjab National Bank and is fetching monthly salary of more than Rs. 1 Lakh per month and is fully capable of maintaining them as well.

5. *Per contra*, it is argued by learned counsel for respondent Nos. 2 and 3 that vide order dated 14.02.2020, passed in the aforesaid maintenance petition filed under Section 125 of Cr.P.C., the Family Court had directed the present petitioner to pay maintenance to the tune of Rs. 20,000/- per month each to respondent Nos. 2 and 3 by holding that the petitioner was liable to pay maintenance to them and the said order had been challenged only in 2024 by filing CRR(F)-41-2024, which is upheld by this Court. The impugned order was passed in a petition filed by them seeking execution of order dated 14.02.2020 and seeking payment of arrears of maintenance due in their favour from the period from 30.04.2020 to 14.04.2021. It is argued that the Family Court, Bathinda was simply executing the order dated 14.02.2020 and could not go behind the legality of the said order as well as the fact that the petitioner had paid maintenance in

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any other proceeding or not. Therefore, it is argued that the petition is liable to be dismissed.

6. I have heard learned counsel for the parties at considerable length and have also perused the material placed on record.

7. So far as the argument that no order of civil imprisonment of the petitioner in the jurisdiction of Courts at Bathinda could have been passed is concerned, the same is bereft of any force, due to the reason that a person who commits default in payment of any amount of money payable by him and is held liable to be sent to civil imprisonment cannot be exonerated only on the ground that no civil prison exists in the jurisdiction of the Court that passed the said order for sending him to civil imprisonment. More so, he did not place any material on record to show that there was no civil prison within the jurisdiction of the Courts at Bathinda. Therefore, this argument is liable to be rejected.

8. Then so far as the next plea as taken by the petitioner counsel that the services of the petitioner were terminated in December, 2017 and he himself was living at the mercy of his friends and near relatives and was even having meals at Gurudwara, therefore, was not in a position to make payment of maintenance is concerned, the same cannot be considered to be a valid plea for setting aside the order passed by the executing Court for sending him to civil imprisonment. Section 128 of Cr.P.C. pertains to the enforcement of order of maintenance. As per this provision, such an order can be enforced by the Magistrate in any place where the person against whom it made and the Magistrate being satisfied as to the identity of the parties and non-payment of the allowance, or as the case may be, the

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expenses, due. On a perusal of the impugned order, it is revealed that the executing Court had observed that the petitioner was liable to pay an amount of Rs. 4,53,676/- as arrears of maintenance for the period of 30.04.2020 to 14.04.2021. The petitioner is shown to have clearly refused to make payment of the aforesaid amount while submitting that he was unable to do the same as he did not own any moveable or immoveable property and further that his services had also been terminated.

9. It will not be out of place to mention here that though the instant petition had been filed in the year 2023 but the petitioner sought to challenge the order dated 14.02.2020 by filing a revision petition before this Court, bearing No. CRR(F)-41-2024, only in the year 2024. Meaning thereby that till the date of filing of this petition, he had not even chosen to challenge the order dated 14.02.2020 and hence the executing Court of course could not go behind the order dated 14.02.2020. It is a different matter that the above mentioned CRR(F)-41-2024 has also been dismissed today by a separate order passed therein. Though, in this petition, the petitioner did not place any document on record to show as to when his services were terminated but learned counsel for respondent Nos. 2 and 3 has placed on record a copy of order dated 26.08.2019, passed by the employer of the petitioner i.e. National Insurance Company, showing that he was ordered to be removed from his services with effect from that date and not from December, 2017 as claimed by him. A perusal of the above said order reveals that it was on account of his continuous absence that his services were terminated. The petitioner could not take any such plea before

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the executing Court and, therefore, the executing Court rightly rejected the plea so taken by the petitioner.

10. Another argument raised by learned counsel for the petitioner is that since he had paid interim maintenance in a petition filed under the DV Act by his wife to the tune of Rs. 5 Lakhs, therefore, he was not liable to pay any maintenance in this case. First of all, no document was produced by the petitioner before the concerned Court to prove this plea. More so, even if it is assumed that an amount of Rs. 5 Lakhs had been paid by the petitioner under the proceedings of DV Act, the same was admittedly paid to his wife and not to the present respondents, who are his daughters. Therefore, this plea was also devoid of any merit.

11. The executing Court by passing a detailed and well reasoned order had disposed of the execution petition by directing the petitioner to undergo civil imprisonment for a period of 30 days on account of his inability to make the payment of arrears of maintenance. By passing of the impugned order, no manifest injustice is shown to have caused to the petitioner, which requires interference by this Court. Accordingly, finding the petition to be devoid of any merit, the same is dismissed.

22.05.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes