



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

CRR(F)-386-2016 (O&M)

Reserved on: 23rd August 2024

Date of decision: 22nd November 2024

KULWINDER KUMAR

.....Petitioner

versus

USHA RANI AND ANOTHER

.....Respondents

CORAM:- HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present:- Mr. Mohit Sadana, Advocate
for the petitioner.

Mr. S.S. Panag, Advocate for
Mr. J.S. Bawa, Advocate
for the respondents.

HARPREET KAUR JEEWAN, J.

1. Prayer in the present Criminal Revision Petition is for setting aside the order dated 04.10.2016 (Annexure P-1) and order dated 01.10.2016 (Annexure P-2), passed by the learned Additional District Judge Family Court, S.B.S. Nagar.

2. As per the order dated 01.10.2016 (Annexure P-2), the Family Court declined the request of the petitioner-husband to deposit a sum of ₹10,000/- per month towards arrears of maintenance along with an amount of ₹5000/- and the defence of the petitioner-husband was struck off due to non-payment of the arrears of interim maintenance.

3. As per the order dated 04.10.2016 (Annexure P-1), the petition filed on behalf of respondent-wife and the minor child under Section 125 Cr.P.C. was allowed and the petitioner was directed to pay maintenance to the



tune of ₹5000/- per month to respondent No.1-wife and ₹3000/- per month to respondent No.2-minor child.

4. As per the order dated 09.11.2016, passed by this Court, the matter was referred to the Mediation and Conciliation Centre of this Court and operation of the order dated 04.10.2016 (Annexure P-1) was stayed, whereby, the interim maintenance was enhanced from ₹5000/- per month to ₹8000/- per month, upon the contentions raised on behalf of the petitioner-husband that he is willing to settle all the disputes amicably.

5. As per the order dated 05.02.2020, passed by this Court, the petitioner was directed to clear the arrears of maintenance @ ₹5000/- per month, in terms of the order dated 09.11.2016 and the said order dated 05.02.2020 was passed without giving any observation regarding the entitlement of maintenance to the wife. The petitioner was further restrained to leave the country without further orders. On 27.02.2020, the petitioner deposited a demand draft amounting to ₹2,49,000/- in the name of respondent No.1-Usha Rani.

6. Upon information by the learned counsel for the parties that there are still chances of settlement, the matter was referred to the Counsellor of High Court, Legal Services Committee vide order dated 11.07.2024. As per Report of the Counsellor dated 17.07.2024, the parties solemnized marriage in the year 2005 and eventually, they got separated. They have a daughter, who is currently residing with her mother-respondent No.2. The parties were explained about the emotional and psychological impact of separation, financial implications and legal concerns regarding maintenance. Interventions were also



provided regarding the personal relationship of the parties. However, the parties did not appear in the next session.

7. I have heard learned counsel for the parties and perused the paper book.

8. The following material question arises in the present revision petition:-

“Whether the Family Court is competent to strike off the defence of the petitioner-husband for non-payment of arrears of interim maintenance in a petition filed under the Section 125 of the Code of Criminal Procedure, 1973?”

9. The co-ordinate Bench of this Court in **“Rani vs. Parkash Singh”; AIR 1996 Punjab and Haryana 175**, held that if the husband has failed to make the payment of maintenance and litigation expenses to his wife, his defence can be struck off.

10. Similarly, in **“Mohinder Verma versus Sapna”; 2014 SCC Online P&H 25147**, the co-ordinate Bench of this Court observed that 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.

11. However, in **“Gurvinder Singh vs. Murti and Others”; I (1990) DMC 559**, the co-ordinate Bench of this Court, considering a case where the trial Court struck off the defence of the husband for non-payment of *ad interim* maintenance, set aside the order of the trial Court and held that instead of following the correct procedure for recovery of maintenance, as provided



under Section 125(3) or Section 421 of Cr.P.C., 1973, the trial Court erred in striking off the defence of the husband. It was further observed that the error of the Court did not assist in the recovery of interim maintenance, but rather prolonged the litigation between the parties.

12. The Hon'ble Apex Court, in "*Rajnish vs. Neha and Another*"; 2021 (2) SCC 224, while discussing the catena of judgments on Enforcement of Orders of Maintenance, observed that the order of maintenance may be enforced by a decree of a Civil Court. However, it was further observed that striking off the defence of the respondent is an order which ought to be passed in the last resort, if the Court finds the default to be willful and contumacious, particularly to a dependent unemployed wife and minor children. The following observations were made by the Hon'ble Apex Court:-

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Discussion and Directions on Enforcement of Orders of Maintenance

127. The order or decree of maintenance may be enforced like a decree of a civil court, through the provisions which are available for enforcing a money decree, including civil detention, attachment of property, etc. as provided by various provisions of the CPC, more particularly Sections 51, 55, 58, 60 read with Order 21.

128. Striking off the defence of the respondent is an order which ought to be passed in the last resort, if the Courts find default to be wilful and contumacious, particularly to a dependant unemployed wife, and minor children.

129. Contempt proceedings for wilful disobedience may be initiated before the appropriate Court.

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13. Coming to the facts of the present case, the petition under Section 125 Cr.P.C. was instituted on 28.04.2012. The petitioner-husband contested the said petition by way of filing a written reply. The relationship was admitted, wherein, a plea was taken that respondent-wife has abandoned the petitioner. The petitioner filed a divorce petition. However, the matter was settled in the Lok Adalat. The parties remained together for one year and thereafter, the wife along with the minor child, again left her matrimonial home. It was further alleged that the respondent wife is educationally qualified. She is B.A., M.A., B.Ed. and PGDCA and is earning by doing tuition work. However, the defence of the petitioner-husband was struck off vide order dated 01.10.2016 (Annexure P-2) due to non-payment of arrears of interim maintenance. It was further observed that the daily wages of a labour are ₹300/- to ₹500/- per day and the petitioner-husband is an able-bodied person. Respondent No.1-wife was allowed maintenance @ ₹5000/- per month and respondent No.2-minor child was allowed maintenance @ ₹3000/- per month.

14. Though the petition continued for more than 04 years before the Family Court from April 2014 to October 2016 and numerous opportunities were granted to the petitioner-husband to lead evidence and to make payment of maintenance, however, it is evident from various interim orders passed by the Family Court (Annexure P-11) that the petitioner-husband had made some payment on various occasions. On 06.06.2016, a sum of ₹5000/- was paid by the petitioner-husband to respondent No.1-wife. On 05.07.2016, a sum of ₹2000/- was paid. On 25.07.2016 and 02.08.2016, the petitioner-husband paid ₹2000/- to the respondent-wife. Thereafter on 09.08.2016, he made a payment of ₹12,000/- to the respondent-wife. On 20.08.2016, payment of ₹8000/- was



made. On 30.08.2016, payment of ₹5000/- was made as interim maintenance.

Similar are the other orders passed by the Family Court.

15. Therefore, such conduct of the petitioner-husband indicates that though he could not clear the entire arrears, but he had been continuously making some payment towards the arrears of interim maintenance.

16. It is always in the interest of the parties that both the parties should be granted an opportunity to lead evidence. There is categorical assertion by the petitioner-husband that respondent-wife is educationally qualified. The rights of the petitioner were prejudiced by striking off his defence as he was not permitted to lead evidence.

17. The Family Court erred in striking off the defence of the husband instead of following a procedure for recovery of interim maintenance. This had further delayed the proceedings *inter se* the parties. No doubt, the Family Court has the power to strike off the defence, in terms of the ratio of the decision by the Hon'ble Apex Court in **Rajnish vs. Neha (supra)**, however, no effort was made by the Family Court to ensure the recovery of interim maintenance by enforcing the order as money decree by way of civil detention, attachment of property, etc.

18. Keeping in view the aforesaid facts and circumstances, I am of the considered opinion that the petitioner should be given an opportunity to defend his case, as such, the present Criminal Revision Petition is allowed. Impugned orders dated 04.10.2016 (Annexure P-1) and 01.10.2016 (Annexure P-2), passed by the learned Additional District Judge Family Court, S.B.S. Nagar, are set aside.



19. However, the petitioner shall pay cost of litigation of ₹25,000/- by way of a demand draft in favour of respondent No.1, which shall be handed over to her on the next date of hearing before the Family Court. Both the parties are directed to appear before the Family Court on 12.12.2024.

20. It has been observed that both the parties have already led the evidence, which has been noted in Paragraphs No.3 and 4 of the order dated 04.10.2016 (Annexure P-1). The respondent-wife has already closed the evidence. However, the petitioner-husband is yet to close the evidence. The Family Court shall afford one opportunity to the petitioner-husband to conclude his evidence. Thereafter, the matter shall be decided afresh by the Family Court within a period of three months upon receiving a copy of this order.

21. However, the interim order dated 05.02.2020, passed by the co- ordinate Bench, whereby, the petitioner has been restrained from leaving the country till further orders, would continue in operation till the final disposal of the petition on merits by the Family Court.

22. With the aforesaid directions, the present Criminal Revision Petition stands disposed of.

23. Pending miscellaneous applications, if any, shall stand disposed of

(HARPREET KAUR JEEWAN)
JUDGE

22nd November 2024
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>