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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-1436-2024 (O&M)
Date of decision: 03.12.2024

Shamsher Singh

...Petitioner

Vs.

Sunita Rani

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manoj Kakkar, Advocate
for the petitioner.

HARPREET SINGH BRAR, J.

1. Present revision petition has been preferred against the impugned order dated 01.08.2024 passed by learned Principal Judge, Family Court, Sonapat in the petition under Section 125 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') [*now Section 144 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS')*], vide which 50% of the monthly pension amount of the petitioner has been attached till the clearance of arrears.
2. The marriage between the petitioner and the respondent was solemnized on 18.06.1981 according to Hindu rites and rituals and two children



i.e. one daughter and one son, were born out of this wedlock. However, a matrimonial dispute ensued between the couple and on 01.12.2005, the respondent left company of the petitioner and thereafter, she filed a petition under Section 125 of Cr.P.C. (*now Section 144 of BNSS*) seeking maintenance. Resultantly, the petitioner was directed to pay Rs.10,000/- per month to the respondent as maintenance vide order dated 29.07.2016 passed by learned Family Court, Sonapat.

3. Subsequently, upon non-payment of the maintenance amount, the respondent preferred an execution application on 18.03.2017 for recovery of arrears of maintenance to the extent of Rs.3,05,000/- due up to 16.03.2017. At that juncture, a sum of Rs.85,000/-, towards interim maintenance, already stood paid to the respondent. Eventually, the application was dismissed as withdrawn vide order dated 01.09.2021.

4. However, another execution application was moved by the respondent on 03.09.2021(Annexure P-1), claiming arrears of Rs.5,20,000/- towards maintenance, due from 16.04.2017 to 16.08.2021. In furtherance of the same, 50% of the monthly pension amount of the petitioner was attached towards clearance of arrears vide impugned order dated 01.08.2024.

5. Learned counsel for the petitioner, *inter alia*, contends that he was ready and willing to cohabit with the respondent but she was averse to the same. In fact, the petitioner had filed for divorce under Section 13 of the Hindu



Marriage Act, 1955, which was dismissed by the learned Family Court, Sonapat, while observing that the couple is in their sixties and the marriage is not irretrievably broken down. He further submits that the learned Court below has erred in attaching 50% of the monthly pension amount of the petitioner towards clearance of arrears as the same is expressly forbidden by Section 11 of the Pensions Act, 1871 (for short 'Pensions Act') and Section 60(1)(g) of Code of Civil Procedure, 1908 (for short 'CPC'). It is further contended that the impugned order has been passed mechanically, without considering the application filed by the petitioner under Section 125(3) & 125(5) of Cr.P.C. (*now Section 144(3) & 144(5) of BNSS*), seeking to rejoin the company of the respondent.

6. Furthermore, the respondent is living with their daughter, who is an Assistant Professor in a Government College and she is fully dependent on her. She is enjoying all the facilities meant for dependents of government employees and is maintaining higher standard of living than the petitioner. Lastly, the petitioner is a 71 years old man with medical expenses and social responsibilities of his own. Learned counsel places reliance on the judgment of this Court in ***Om Parkash Vs. Javitri Devi, 2018(1) DMC 462***, the Kerala High Court in ***A.S.N. Nair Vs. Sulochana, 1981 CriLJ 1898*** and the Allahabad High Court in ***Dilsad Vs. State of U.P., AIR 2005 All 403***.

7. I have heard learned counsel for the petitioner and carefully perused



the record of the case with his able assistance.

8. The object and purpose behind granting maintenance 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. The Courts are required to conduct the maintenance proceedings while being alive to the legislative intent behind the provision under Section 125 Cr.P.C. (*now Section 144 of BNSS*) in its true spirit, which is to provide speedy assistance and social justice to women, children and infirm parents. The provisions of Section 125 Cr.P.C. (*now Section 144 of BNSS*) were enacted as a measure to further social justice and protect dependent women, children and parents, which also fall within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India.

9. A three-Judge Bench of the Hon'ble Supreme Court in ***Vimala (K.) Vs. Veeraswamy (K.), (1991) 2 SCC 375***, speaking through Justice Fatima Beevi, opined that as follows:

“3. Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing, and shelter to the deserted wife.”

10. A two-Judge Bench of the Hon'ble Supreme Court in ***Kirtikant D.***



Vadodaria Vs. State of Gujarat, (1996) 4 SCC 479, speaking through Justice Faizan Uddin, opined as follows:

“15. ...While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation.”

11. There is a general tendency on the part of the wife to amplify her needs and the husband to conceal his actual income, making it difficult to determine the earning capacity of the rival claimants with exactitude. The rival claimants must scrupulously bring on record their actual respective earning capacities in order for the Court to arrive at quantum of maintenance which is just and fair in terms of principle of equistatus. The quantum of maintenance must be justifiable and realistic to provide succour to the dependent spouse and also to avoid occurrence of the two extremes of the maintenance being either paltry or extravagant, ensuring that neither of the two is reduced to a life of penury. The adequacy of the maintenance allowance has to be determined by the yardstick of the dependent spouse being able to lead a life of reasonable comfort.

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12. At this juncture and for proper adjudication of the present case, it is pertinent to refer to the relevant provisions contained in Section 125 of Cr.P.C. (now Section 144 of BNSS), Section 60 of CPC and Section 11 of the Pensions Act, which are extracted below:

Section 125 Cr.P.C
Order for maintenance of wives, children and parents.

xxx xxx xxx

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each months allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.--If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wifes refusal to live with him.

Section 60 CPC
Property liable to attachment and sale in execution of decree.

(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter



144 of BNSS), the petitioner-husband is bound to pay the maintenance amount as ordered by the Court. The same is a personal liability and the petitioner-husband cannot be allowed to avoid it by seeking refuge of Section 11 of the Pensions Act or Section 60 of CPC, as it would be against the interest of justice.

14. A Co-ordinate Bench of the Bombay High Court in the case of ***Bhagwant Vs. Radhika, 2019(3) BomCR (Cri) 600*** was confronted with the same question, wherein, speaking through Justice M.G. Giratkar, the following was held:

“4. ...The above said Section shows that in civil disputes pensions cannot be attached at the instance of creditors. Commentary relied on by learned counsel for the applicant/husband at serial No.16 under head of attachment shows that, "maintenance allowance granted to wife cannot be considered as debt - She is not a creditor hence exemption under Section 11 cannot be granted to husband. (1985)87 Punk LR 682 : (1985) 12 Cri LT 219". The said commentary itself shows that pensions can be attached to recover amount of maintenance. Hence, the stand taken by learned counsel for the applicant/husband that pensions cannot be attached is not digestible.

15. Similarly, the Gujarat High Court in ***Ashokbhai Devsingbhai Chauhan Vs. Taraben Ashokbhai Chauhan, in R/criminal Revision Application No.920 of 2019 dated 11.11.2019*** and the Madras High Court in ***P. Amutha Vs. Gunsekaran, 2023(1) CivCC 586***, relying upon ***Bhagwant***'s case (*supra*), have also held Section 11 of the Pensions Act to be inapplicable with respect to realisation of arrears of maintenance. Reliance can also be placed on the judgment of this Court in ***Amrik Singh Vs. Jannatpreet Singh and others in***



CRR(F)-1468-2023 decided on 18.10.2024.

16. In view of the above discussion, the present petition is disposed of in the following terms:

- (i) The impugned order dated 01.08.2024 is upheld to the extent of attachment of 50% of the monthly pension amount of the petitioner till the clearance of arrears of maintenance.
 - (ii) However, the execution proceedings can only be pursued for arrears accrued in the year preceding the date of the filing of the execution petition i.e. for the period from 03.09.2020 to 02.09.2021.
 - (iii) The respondent will be at liberty to file a civil suit for recovery to recover rest of the amount that has fallen in arrears i.e. the amount due before 03.09.2020.
17. The pending miscellaneous application(s), if any, shall also stand disposed of.

03.12.2024

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**[HARPREET SINGH BRAR]
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No