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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-56932-2024 (O&M)
Date of decision: 14.11.2024

Balkar Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sandeep Godara, Advocate
for the petitioner.

HARPREET SINGH BRAR J. (ORAL)

1. Present petition has been filed praying for quashing of the impugned orders dated 02.09.2024 (Annexure P-3), dated 16.09.2024 (Annexure P-4) and dated 30.09.2024 (Annexure P-5) passed by learned Additional Principal Judge, Family Court-II, Camp Court at Nakodar, District Jalandhar in case bearing No.CRM/1623/2023 (Annexure P-2) titled as 'Manjit Kaur and another Vs. Balkar Singh', instituted on 16.10.2023, vide which the petitioner has been sent to civil imprisonment for committing default in making the payment of arrears of interim maintenance awarded by

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learned Family Court vide order dated 06.03.2023.

2. Succinctly, the facts are that marriage of the petitioner was solemnized with respondent No.2 on 13.03.2009 and out of this wedlock, one female child i.e. respondent No.3 was born. The matrimonial dispute ensued between the couple and consequently, respondents No.2 & 3 i.e. wife and minor daughter, initiated the proceedings 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')*], in which an application for grant of interim maintenance was filed on 08.01.2020 and learned Family Court, vide order dated 06.03.2023, granted interim maintenance to the tune of Rs.3,500/- per month to respondent No.2-wife and Rs.2,500/- per month to respondent No.3-minor daughter and it was also directed that amount of interim maintenance would be paid in the bank account of respondent No.2 before 10th day of each month. When the petitioner failed to pay the amount of interim maintenance to respondents No.2 & 3, they filed a petition under Section 128 of Cr.P.C. (*now Section 147 of BNSS*) for recovery of amount of interim maintenance of Rs.2,72,000/-, wherein the petitioner was ordered to be sent to civil imprisonment for non-payment of the amount of interim maintenance. 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

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respondent No.2 left her matrimonial home without any justifiable cause and she also took the minor daughter-respondent No.3 along with her. The petitioner is working as a labourer and he is not in a position to pay the amount of interim maintenance to respondents No.2 & 3. It is further contended that learned Family Court, without following the proper procedure, vide impugned orders (Annexures P-3 to P-5), sent the petitioner to civil imprisonment on account of non-payment of arrears of interim maintenance. As such, the impugned orders are liable to be set aside.

4. I have heard learned counsel for the petitioner and perused the record of the case with his able assistance.

5. 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

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constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India.

6. 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 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.”

7. Further, 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

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distress, destitution and starvation.”

8. Another objective the legislature has sought to achieve by this provision is to provide maintenance *pendente lite* to the applicant spouse during proceedings emerging out of matrimonial disputes so that she/he can maintain herself/himself, have sufficient funds to pursue the litigation, and not suffer at the instance of the affluent spouse.

9. 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.

10. While dealing with the issue of maintenance *in extenso*, a two Judge Bench of the Hon'ble Supreme Court in ***Rajnish Vs. Neha and another, (2021) 2 SCC 324*** laid down the criteria for determining quantum of

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maintenance and issued the following directions:

"VI Final Directions

130. In view of the foregoing discussion as contained in Part B - 1 to V of this judgment, we deem it appropriate to pass the following directions in exercise of our powers under Article 142 of the Constitution of India:

(a) Issue of overlapping jurisdiction

131. To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that:

- (i) where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or setoff, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding;*
- (ii) it is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding;*
- (iii) if the order passed in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding*

(b) Payment of Interim Maintenance

132. The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the concerned Family Court / District Court / Magistrates Court, as the case may be, throughout the country.

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***(c) Criteria for determining the quantum of maintenance***

133. *For determining the quantum of maintenance payable to an applicant, the Court shall take into account the criteria enumerated in Part B III of the judgment.*

134. *The aforesaid factors are however not exhaustive, and the concerned Court may exercise its discretion to consider any other factor/s which may be necessary or of relevance in the facts and circumstances of a case.*

(d) Date from which maintenance is to be awarded

135. *We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B-IV above.*

(e) Enforcement/Execution of orders of maintenance

136. *For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1956; Section 20(6) of the D.V. Act; and Section 128 of Cr.P.C may be applicable. The arder of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC more particularly Sections 51, 55, 58, 60 r.w. Order XXI."*

11. For proper adjudication of the case in hand, it is pertinent to refer to the relevant provision contained in Section 128 of Cr.P.C. (now Section 147 of BNSS), which is extracted below:

“128. Enforcement of order of maintenance---*A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid; and such order may be enforced by any Magistrate in any place where the person to whom the allowance is to be paid; and such order may be*

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enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due.”

12. The distinction between the mode of enforcing recovery and effecting actual recovery of the amount of maintenance, which has fallen in arrears was discussed in the case of ***Smt. Kuldip Kaur Vs. Surinder Singh and anr., (1989) 1 SCC 405***, wherein a two Judge Bench of the Hon’ble Supreme Court, speaking through Justice M.P. Thakkar, made the following observations:

“6. A distinction has to be drawn between a mode of enforcing recovery on the one hand and effecting actual recovery of the amount of monthly allowance which has fallen in arrears on the other. Sentencing a person to jail is a 'mode of enforcement'. It is not a 'mode of satisfaction' of the liability. The liability can be satisfied only by making actual payment of the arrears. The whole purpose of sending to jail is to oblige a person liable to pay the monthly allowance who refuses to comply with the order without sufficient cause, to obey the order and to make the payment. The purpose of sending him to jail is not to wipe out the liability which he has refused to discharge. Be it also realized that a person ordered to pay monthly allowance can be sent to jail only if he fails to pay monthly allowance 'without sufficient cause' to comply with the order. It would indeed be strange to hold that a person who 'without reasonable cause' refuses to comply with the

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order of the Court to maintain his neglected wife or child would be absolved of his liability merely because he prefers to go to jail sentence of jail is no substitute for the recovery of the amount of monthly allowance which has fallen in arrears Monthly allowance is paid in order to enable the wife and child to live by providing with the essential economic wherewithal. Neither the neglected wife nor the neglected child can live without funds for purchasing food and the essential articles to enable them to live. Instead of providing them with the funds, no useful purpose would be served by sending the husband to jail Sentencing to jail is the means for achieving the end of enforcing the order by recovering the amount of arrears. It is not a mode of discharging liability. The section does not say so. The Parliament in its wisdom has not said so commence does not support such a construction. From where does the Court draw inspiration for persuading itself that the liability arising under the order for maintenance would stand discharged upon an effort being made to recover it ? The order for monthly allowance can be discharged only upon the monthly allowance being recovered. The liability cannot be taken to have been by sending the person liable to pay the monthly allowance, to jail. At the cost of repetition it may be stated that it is only a mode or method of recovery and not a substitute for recovery. No other view is possible.” (emphasis added)

13. The intent of the legislature with regard to putting a person, against whom order granting maintenance is passed, under an obligation to pay the monthly allowance and make the actual payment of arrears, is made

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explicit by the provision, which allows for sentencing the person, who fails without sufficient cause to comply with the order, for the whole or any part of each month's allowance for the maintenance, including interim maintenance, which remain unpaid. The sentence may extend to imprisonment for a term upto one month or until payment is made, if sooner. The provisions under Chapter IX of Cr.P.C. are in the nature of a beneficent legislation. The purpose and object is to provide a simple and speedy remedy, and to ensure that the deserted wife, children and parents are not left without any means for subsistence.

14. At this juncture, it would be profitable to cite the judgment delivered by a Division Bench of the Rajasthan High Court in ***In Re A Ref. Under Section 395 Cr.P.C., 1973 By District and Sessions Judge, Pali Vs. Unknown, 2022 (1) RCR (Criminal) 435***, wherein the following was observed:

“7. Firstly, we consider the plain language of Section 125(3) Cr.P.C., 1973 which provides that "if a person ordered to pay maintenance, fails without sufficient cause to comply with the order, the 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 month's allowance for the maintenance....., to imprisonment for a term which may extend to one month or until payment if sooner made." Splitting the provision for better understanding, it becomes clear that it operates in four parts:

- (i) Non-compliance of the order of maintenance by the person directed to pay monthly maintenance,*
- (ii) Every breach of the order,*

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(iii) Issuance of warrant for levying the amount due in the manner provided for levying fines and

(iv) Sentencing such person for the whole or any part of each month's allowance, imprisonment for a term which may extend to one month.

Meaning thereby, if the person ordered to make payment of maintenance fails to do so, the Magistrate shall be empowered to issue warrant for recovery of the maintenance due in the manner provided for levying fines and may also sentence such person for the whole or any part of each month's allowance to imprisonment for a term which may extend to one month. Clearly thus, every single breach of the monthly maintenance order gives rise to a distinct cause of action calling for issuance of a warrant for levying of the amount and a discretion is given to the Magistrate that in the event of non-payment, the person ordered may be sentenced to imprisonment for a term which may extend to one month for each month's default. **The clear intention of the legislature is that as the order of maintenance is stipulated to provide maintenance on a monthly basis, every breach thereof is an infringement for which a separate warrant for levying fine is to be issued and in addition thereto, the person so ordered can be sentenced to imprisonment for a term which may extend to one month concurring with every breach.** The application for recovery of the maintenance amount can be filed within a period of 12 months from the date it becomes due. The section does not provide that the claimant must file separate applications for recovery of each month's allowance.” (emphasis added)

15. A perusal of the order dated 06.03.2023 indicates that learned Family Court has duly considered the material placed before it for determining the quantum of maintenance. A careful and just balance has been drawn, keeping in view the spiralling inflation rates and high cost of living corresponding to the reasonable needs of respondents No.2 & 3. However, when the petitioner did not pay the amount of arrears qua the interim maintenance, respondents No.2 & 3 filed a petition under Section 128 of

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Cr.P.C. (*now Section 147 of BNSS*), in which, vide impugned orders (Annexures P-3 to P-5), learned Family Court, by observing that efforts were made to get the matter amicably resolved between the parties, however, the same did not yield any result and also in view of the statement made by the petitioner that he is unable to pay the amount of interim maintenance, sent him to civil imprisonment for each months default.

16. Keeping in view the facts and circumstances of the case at hand, this Court finds no illegality or perversity in the impugned orders passed by learned Family Court, which warrant interference by this Court. Accordingly, the present petition stands dismissed being devoid of any merit.

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

14.11.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No