



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Reserved on: 26th September, 2023
Pronounced on: 1st February, 2024*

+ MAT.APP.(F.C.) 172/2022 & CM APPL. 64721/2022 (Stay)

MOHIET ANAND

..... Appellant

Through: Mr. Parnjay Chopra, Advocate.

versus

PARUL ANAND

..... Respondent

Through: Mr. Y.K. Singh & Mr. Pranaynath Jha,
Advocates with respondent in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Appeal under Section 19 of the Family Courts Act, 1984 has been filed on behalf of the appellant/husband against the Order dated 30.09.2022 *vide* which the appellant/husband has been directed to be taken into Custody for civil imprisonment on account of non-payment of arrears of maintenance awarded under Section 24 of the Hindu Marriage Act, 1955 (*hereinafter referred to as "HMA, 1955"*) in the ***Execution Petition No. 11/2020.***

2. Briefly stated, the facts are that the parties got married on 14.04.1999 according to Hindu Rites and ceremonies. However, due to differences between them, the respondent/wife separated from the appellant/husband and filed a Divorce Petition bearing No. HMA 630 of 2014 (re-registered as



HMA No. 48/2018) under Section 13(1)(ia) of the HMA, 1955. During the trial, an Order dated 28.09.2015 under Section 24 of HMA, 1955 was made against the appellant/husband *vide* which he was directed to pay Rs. 14,000/- per month to each of the two children and Rs. 16,000/- per month to the respondent/wife from the date of filing of the application. In addition to maintenance, Rs. 20,000/- as litigation expenses was given to the respondent/wife.

3. While the divorce proceedings were pending, the respondent/wife filed the *Execution Petition No. 27/2018* seeking enforcement of the interim Order dated 28.09.2015 granting the interim maintenance to the wife and the children. In this Execution Petition, the appellant/husband was taken into custody and sent to civil imprisonment on 24.02.2021 for the maximum sentence period of three months, which was served by the appellant/husband.

4. The appellant/husband failed to appear in the Divorce Proceedings and he was proceeded *ex parte* and the divorce was granted *vide* Judgment dated 22.05.2020.

5. The respondent filed another *Execution Petition bearing No. 11/2020* for the execution of the same Order dated 28.09.2015 of interim maintenance. Now again, the learned Family Judge *vide* Order dated 30.09.2022 directed that as the Judgment Debtor/appellant/husband was not willing to make the payment of arrears of maintenance amounting to Rs. 22,00,000/- till the date of Divorce decree, he be taken into custody and be sent to civil imprisonment till 26.10.2022. The respondent/wife was directed to deposit the subsistence allowance within three days, as per Rules.



6. *The appellant/husband aggrieved by the impugned Order dated 30.09.2022, has preferred the present Appeal.*

7. ***It is submitted on behalf of the Appellant*** that the impugned Order dated 30.09.2022 of remanding the appellant/husband to civil imprisonment is absolutely illegal and perverse in terms of Section 58 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC, 1908"*). The appellant/husband has already served the maximum punishment of three months as stipulated in Section 58 of CPC, 1908 in regard to interim maintenance Order dated 28.09.2015 and he cannot be sent to jail again for the execution of the same Order.

8. It is further submitted that, while in a proceeding under Section 125 Code of Criminal Procedure, the learned Judge can sentence the appellant to imprisonment for each month's default, the same is not permissible in civil proceedings. Reliance has been placed on the case of Rajnish v. Neha (2021) 2 SCC 324 wherein the Supreme Court categorically ***the order 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 read with Order 21.***

9. It is alleged that the Order dated 30.09.2022 is in direct contravention of Order XXI Rule 11A of the CPC, since there was no Application seeking arrest of the appellant, made by the decree holder/respondent. Further, there was no Show Cause Notice issued to the appellant before the passing of the Order and thus, the same is liable to be set aside on this sole ground itself.

10. It is, therefore, submitted that the impugned Order dated 30.09.2022 of the learned Judge, Family Court passed in the Execution Petition No. 11/2020, be set aside.



11. Vide order dated 03.11.2022, this Court granted stay against the appellant being taken into custody in terms of impugned Order of the learned Judge, Family Court which was continued for subsequent dates.

12. **The respondent/wife** appeared through her counsel, though no formal Reply has been filed on her behalf.

13. **The appellant in his Written Submissions** has submitted that as per Section 18 of the Family Courts Act, the Family Court is bound to execute Orders in accordance with the procedure provided under CPC. However, the Order passed by the learned Judge, Family Court directing the appellant to Civil imprisonment the second time in execution of the same Order of maintenance, is contrary to the statutory scheme as provided under Sections 36, 51(c) and 58(2) of the CPC. Reliance has been placed on the case *of M/s Bhandari Engineers & Builders Pvt Ltd v. M/s Maharia Raj Joint Venture & Ors* 2021 SCC OnLine Del 3595; *Dhanalakshmi Ammal v. Krishnamurthi*, AIR 1951 Mad 756; *Damiran Sen v. Arpita Sen*, 2008 SCC OnLine Cal 647; *Sanjeeet Singh v. Anupama* 245 (2017) DLT 145; *Rajesh Arora v. Sonia Arora and Anr.* 2020 SCC OnLine P&H 4562; *Jolly George Verghese and Another v. Bank of Cochin*, (1980) 2 SCR 913 and *Damodar Shaligram v. Malhari and Ors*. ILR 1883 7 BOM, in this regard.

14. **Submissions heard from the counsels for the parties and the documents as well as the evidence perused.**

15. The *factual background* is that the parties had got married on 14.04.1999 according to the Hindu customs and rites. It was their love marriage which did not have the approval of the parents of the parties. Subsequently, differences arose between the parties and the respondent/wife



left the company of the appellant/husband and instituted the Divorce Petition under Section 13(1)(ia) of HMA, 1955 on the ground of cruelty.

16. The interim maintenance was granted *vide* Order dated 28.09.2015 under Section 24 of HMA, 1955 in a total sum of Rs. 44,000/- for the respondent/wife and the two children. The appellant/husband failed to contest the aforesaid Divorce Petition and was proceeded *ex parte*. Accordingly, the divorce was granted to the respondent/wife *vide* Order dated 22.05.2020.

17. The respondent, during the pendency of the Divorce proceedings, filed an *Execution Petition bearing No. 27/2018* in respect of order of interim maintenance dated 28.09.2015 claiming maintenance arrears. In the said proceedings, on account of non-payment of the maintenance, the appellant/husband was taken into custody and sent to civil imprisonment on 24.02.2021 for the period of three months which was the maximum sentence and the same was served by the appellant/husband.

18. During the pendency of the earlier Execution Petition, the respondent had filed another Execution Petition No. 11/2020, which is the subject matter of this Appeal. The learned Judge, Family Court *vide* impugned Order dated 30.09.2022 considered the conduct of the appellant/husband in not complying with the maintenance order pursuant to which an amount of approximately Rs. 22,00,000/- towards maintenance had got accumulated, which the appellant/husband was refusing to pay. The Family Court observed that even though the appellant/husband had been earlier sent to the civil imprisonment in the year 2021, despite this he is not willing to make payment. As the decree holder could file separate Execution Petitions for each month's default, the appellant/husband could repeatedly be sent to civil



imprisonment for each monthly default and therefore, the appellant was directed to be taken into custody, and sent to civil imprisonment on 26.10.2022.

19. However, on the same date, at about 03:30 P.M. on tendering of Demand Draft of Rs. 2,00,000/- drawn in favour of the respondent/wife/Decree Holder, the order of Civil Imprisonment was suspended till clarification on the point of law about civil imprisonments in case of monthly maintenance was sought from this Court, which is being discussed in the present case.

20. At the outset, it is pertinent to analyse the law with respect to enforcement of orders of maintenance.

I. Whether maintenance Decree to be executed in accordance with the provisions of Code of Civil Procedure:

21. Section 18 of the Family Courts Act, 1984 provides for execution of decrees and orders passed by a Family Court as per the provisions of CPC/CrPC and reads as under:-

"Section 18. Execution of decrees and orders.—

(1) A decree or an order [other than an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)], passed by a Family Court shall have the same force and effect as a decree or order of a civil court and shall be executed in the same manner as is prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the execution of decrees and orders.

(2) An order passed by a Family Court under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) shall be executed in the manner prescribed for the execution of such order by that Code.



(3) A decree or order may be executed either by the Family Court which passed it or by the other Family Court or ordinary civil court to which it is sent for execution."

22. In the case of Rajnesh (Supra), the Apex Court has expounded that an application for an order of Execution may be filed under the following provisions, as may be applicable:

- a) Section 28-A of HMA, 1955 read with Section 18 of Family Courts Act, 1984 and Order 21 Rule 94 CPC for executing an Order under Section 24 HMA (before the Family Court);
- b) Section 20(6) of the DV Act, before the Judicial Magistrate;
- c) Section 128 CrPC before the Magistrate's Court.

23. The Supreme Court in the case of Rajnesh (Supra), categorically held that *"For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28-A of the Hindu Marriage Act, 1955; Section 20(6) of the DV Act; and Section 128 of CrPC, as may be applicable. The order 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 read with Order 21."*

24. Therefore, it is evident a Decree and Order for recovery of the arrears of maintenance passed under Section 24 of the HMA, 1955, shall have the same force and effect as a decree of a Civil Court and has to be recovered as per the procedure detailed in **Order 21 Rule 94 CPC, 1908. Thus, we hold that an Order under Section 24 HMA, can be enforced under Section 28-A of HMA, 1955 read with Section 18 of Family Courts Act, 1984 and CPC.**



**II. Procedure under CPC for Civil Imprisonment in default of payment
in execution of a Money Decree.**

25. Having concluded that an Order of maintenance under Section 24 HMA is executable like a money Decree under the Code of Civil Procedure, we may advert to the relevant sections. Section 51 of the CPC defines the scope and powers of the Court to enforce execution which reads as under: -

“Section 51: Powers of Court to enforce execution.—

Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree

- (a) by delivery of any property specifically decreed;*
- (b) by attachment and sale or by the sale without attachment of any property;*
- (c) by arrest and detention in prison [for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section];*
- (d) by appointing a receiver; or*
- (e) in such other manner as the nature of the relief granted may require:*

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied—

- (a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,--*
 - (i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or*
 - (ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or*
- (b) that the judgment-debtor has, or has had since the date of the decree the means to pay the amount of the decree or some*



substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.”

26. ***Rules 37 and 40 of Order XXI, CPC*** further prescribe the procedure for detention of a judgment debtor in prison as under:-

Order XXI: Execution of Decrees and Orders Payment under Decree-

Rule 37. Discretionary power to permit judgment-debtor to show cause against detention in prison.

(1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court [shall], instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison :

[Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.]

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.”

Rule 40. Proceedings on appearance of judgment-debtor in obedience to notice or after arrest.—

(1) When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for



execution and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison.

(2) Pending the conclusion of the inquiry under sub-rule (1) the Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.

*(3) **Upon the conclusion of the inquiry under sub-rule (1) the Court may, subject to the provisions of section 51 and to the other provisions of this Code, make an order for the detention of the judgment debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:***

Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making the order of detention, leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

(4) A judgment-debtor released under this rule may be re-arrested.

(5) When the Court does not make an order of detention under sub-rule (3) it shall disallow the application and, if the judgment-debtor is under arrest, direct his release.]

27. It is gleaned from a bare perusal of the above provisions that Section 51 of CPC, 1908, prescribes four main modes of execution:

- i. By delivery of property specifically decreed;
- ii. By attachment and sale of property;
- iii. Detention in prison in execution of a money decree; or
- iv. Appointment of Receiver.



28. **Proviso to Section 51** prescribes *twin test* to be satisfied before any person can be ordered to be detained in civil imprisonment; viz, *firstly*, there is an opportunity is given to Show Cause to the Judgment Debtor to explain as to why he should not be committed to prison. *Secondly*, it is after the Court arrives at a satisfaction *which is to be recorded in writing*, that the Judgment Debtor has since the date of decree, *means to pay the amount* or substantial part thereof and *refuses or neglects to pay the same or that he is likely to transfer his money or is likely to abscond*, that detention of the judgment debtor can be directed.

29. **Rule 37 of Order XXI, CPC** explains the procedure to be followed for arrest. It states that the process be commenced on an application being filed by the decree Holder for arrest of the Judgement Debtor and a Notice be issued to *show cause* why he should not be detained in civil imprisonment though warrants of arrest may be issued to secure his presence where the Court is satisfied by an affidavit or otherwise, that there is likelihood of his absconding or leaving the jurisdiction of the Court with an object to delay the execution and to avoid the compliance of the Orders. The warrants for arrest issued under Rule 37(2) is only to ensure the appearance of judgement debtor to undergo the mandatory inquiry under Rule 40 CPC. In such a case, *it is necessary for the Court to record its reasons, for a non-speaking order is as good as an arbitrary and draconian action against a person depriving him of his fundamental right to liberty contrary to the due process of law. This mandatory provision ensures the preservation of an individual's right to liberty, enshrined in Article 21 of our Constitution, by following the principle of natural justice and audi alteram partem as*



observed by the High Court of Punjab and Haryana in the case of Rajesh Arora (Supra) .

30. ***Rule 40 of Order XXI, CPC*** further provides for the procedure for holding the mandatory inquiry before remanding the person to prison. On securing the presence of the judgement debtor under Rule 37 before the court, all such evidence be taken by the court as may be produced by decree holder in support of his application for execution. Thereafter, the judgement debtor shall also be given of showing cause why he should not be committed to the civil prison. While the enquiry is underway, the judgement debtor may either be released on furnishing of a security or be arrested but this duration shall not be more than 15 days. Once the enquiry is concluded, then too, before ordering the imprisonment, the Court shall give an opportunity to satisfy the decree on his furnishing a security, before finally directing the Civil imprisonment. *Sub-rule 3 of Rule 40 subjects the Court's power of detaining the judgment-debtor in civil prison to the provisions of Section 51. Therefore, the Court cannot order detention unless it is satisfied that any of the three conditions in the Proviso to Section 51, exist.*

31. The detailed procedure as prescribed in the aforesaid rules makes it abundantly clear that a person's personal liberty cannot be curtailed only on the asking of the decree holder but arrest is to be resorted to only after scrupulous adherence to the procedure when faced with the recalcitrant attitude of the judgement debtor.

32. The impugned Order does not reflect that any Show-Cause Notice was given to the appellant/husband to explain as to why he should not be sent to civil imprisonment. Moreover, there is no satisfaction recorded in writing that the appellant/husband since the date of Order, has means to pay



the money, but he is intentionally neglecting or refusing to pay. Unless there is a finding that the non-payment is on account of wilful conduct of the appellant/husband intending to defeat the *bona fide* claim of the respondent, the Order of sending him to civil imprisonment, is neither justified nor warranted.

33. The learned Judge, Family Court has failed to follow the procedure as prescribed under Section 51 read with Rule 37 and 40 of CPC, 1908 before directing the detention of the appellant/husband in the civil imprisonment.

III. Can a Judgement Debtor be sent to Jail for more than three months in repeat Execution Petitions for recovery of maintenance that may accrue from time to time:

34. The appellant has further contended that in the execution of the same civil decree, a person cannot be re-arrested and sent to jail in all or a period of more than three months.

35. An interesting question which arises for this court's consideration is: *whether in execution of a money (maintenance) decree, a person can be sent repeatedly to imprisonment, beyond a maximum period of three months in subsequent Execution Petitions that may get filed for the maintenance that may accrue from time to time under the same Order of maintenance.*

36. Section 58 (1) of CPC, 1908 provides for the detention of the JD in execution of a decree and reads as under: -

“Section 58: Detention and Release.—

(1) Every person detained in the civil prison in execution of a decree shall be so detained,

(a) where the decree is for the payment of a sum of money exceeding [five thousand rupees], for a period not exceeding three months, and,



(b) where the decree is for the payment of a sum of money exceeding two thousand rupees, but not exceeding five thousand rupees, for a period not exceeding six weeks.

(2) A judgment-debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison."

37. According to Section 58(1) of CPC, 1908, in execution of money decree, civil imprisonment may be given to a person for a period **not exceeding three months**, in case the payment is of a sum of money exceeding Rs. 5,000/-. **Further**, as per the explicit wording of Clause 2 of Section 58 of CPC, 1908, a judgement debtor cannot be '***re-arrested under the decree in execution of which he was detained in the civil prison***'.

38. In the case of Damodar Shaligram (Supra), the plaintiff had obtained a decree entitling him to recover money in three annual instalments. He obtained a warrant of arrest for the amount of costs, pursuant to which one of the defendant was arrested and also discharged on the request of the plaintiff on the next day. After the first instalment became due, the decree holder again sought arrest of judgement debtor as he defaulted in payment. It was held that the plain language of Section 341 of CPC (*Old CPC having similar provision*) says that a judgment debtor cannot be re-arrested under the decree in execution of which he was already imprisoned. This section read along with the definition of a decree as given in the interpretation clause shows that the legislature intended that the judgment debtor should not be imprisoned more than once under the same decree. Further, Sections 224(b), 230 and 235 CPC use the term "execution of a decree", "execute a



decree” and “enforce a decree” in regard to the Decree executed in part or its entirety.

39. In the case of Dhanalakshmi Ammal (Supra) a question along similar lines came up for the consideration of court that whether a judgment-debtor/husband in in an Execution Petition for maintenance decree, after having been committed to jail for the period of six months i.e. the maximum period under Section 58(2) of the CPC (old Code), could be sent again to civil prison in another Execution Petition for recovering maintenance which had accrued by then.

40. The argument that a maintenance decree can be considered as a composite decree consisting of bundle of separate money decrees, in which re-arrests and re-commitments are possible was rejected by the Court. It was observed that a composite decree is like a tamarind or a mango tree having many branches while other decrees are like a coconut tree having no branches. But both kind of trees have one main trunk which can be cut at the root. Though the original branches may be many and new branches may spring into being, but the trunk and the root are one. Thus, as the tree is the same, rearrest and recommitment to the civil prison will thus, be barred under Section 58(2) CPC. It was observed that the origin of the maintenance decree is the date when it was passed and the end of it when the decree holder dies.

41. The situation of repeatedly sending a person to jail on recurring defaults in payment of maintenance was held akin to the story of Vikramaditya of spending six months in one place and six months another, except that instead of being in town and forest, but it would be in jail and hiding. Thus, it was observed that a wife could not make a husband go to



jail, every time he would be released from jail for earlier default, for the maintenance that would have accrued for the subsequent months in the meanwhile.

42. Further, the plea that the decree holder woman approaching the Court and seeking imprisonment of her husband at her own cost, reflects her pitiable and desperate condition was rejected by observing that in insisting on imprisonment, the wife may be deriving pleasure to ensure that he does not live with his second wife, to whom he had got married. It was concluded that the courts cannot be guided by emotions but have to work strictly within the confines of mandatory provisions of Law. In this case, a reference was made to Damodar Shaligram (Supra) wherein it was observed that “*this section is one clearly intended to operate in restriction of the power of arrest and in favour of liberty and should be construed according to the plain meaning of the terms*”.

43. In the present times where Rule of Law is the guiding grund norm and each individual has his rights protected under Constitution; the fundamental rights of a person cannot be infringed without following due process of law. Arrest and Jail should be resorted to only in rare cases of contumacious denial to pay the maintenance despite having means and even when such imprisonment is granted, it is hedged upto a period of maximum three months. It is not as if after the person has suffered the imprisonment of three months that the debt gets extinguished and the decree holder can resort to other means of recovery like attachment and sale of the property of the judgement debtor.

44. In the case of Samiran Sen (Supra) wherein the husband was kept in a civil prison for his failure to pay the outstanding amount of maintenance, it



was observed by the Court that as per Section 58 of the CPC, a person could not in any circumstances be detained in a civil prison for execution of a decree beyond a period of three months. If any such order was made by a Civil Court directing a person to imprisonment beyond a period of three months, the same would be in violation of Article 21 of the Constitution of India. It was further observed that while Section 58 (2) provides that merely because the judgement-debtor was detained in civil prison his debt could not be held to be discharged, however, it also provides that the judgment debtor shall not be liable to be re-arrested under the decree, in execution of which he was already detained in civil prison.

45. Likewise, In the case of Santosh Kumar Mode and Ors. v. Adaita Ballav Satpathy AIR 1992 Ori 29, it was observed that the debt cannot be held to be discharged merely because the judgement-debtor was detained in civil prison for full term under Section 58 (2) of CPC. It was held that discharge of a debt could take place either by operation of law or by express volition of the decree-holder.

46. We thus conclude that it is the **total period in civil prison in execution of the decree in the same suit, cannot exceed three months.** Though the decree may be executed in instalments as in the case of maintenance orders, but the decree/order being only one, arrest can be made as prescribed, for a maximum period of three months. Though the execution petition may be filed for realization of the maintenance that may become due from time to time but that would not give a right to seek further imprisonment beyond the maximum period as prescribed by **Section 58 (2) of the CPC.** A person who has already having been sent to civil imprisonment for a period of three months, cannot be sent to civil



prison again in execution of the same decree for a second time. Further, merely because the judgement debtor had been detained in civil prison for the full term of three months as provided under Section 58 (2) of the CPC, his debt cannot be said to be discharged, which can still be recovered through other means as provided in the section.

47. In the present case, in Execution Petition bearing No. 27/2018 filed by the respondent of Order dated 28.09.2015, the appellant/husband has already been sent for the period of three months, to civil imprisonment on 24.02.2021 which was served by him. As the respondent has again filed an Execution Petition bearing No. 11/2020 of the same Order dated 28.09.2015, the appellant cannot be directed to civil imprisonment again in execution of the same decree for arrears of maintenance that have subsequently become due.

Civil Imprisonment under S.125 Code of Criminal Procedure:

48. The appellant/husband has rightly contented that he could have been repeatedly sent to jail but that that would only be permissible in execution of the Order of Maintenance granted under Section 125 of Code of Criminal Procedure, 1973 (*hereinafter referred to as “Cr.P.C., 1973”*).

49. Section 125 (3) of Cr.P.C., 1973 reads as under: -

“Section 125 (3): —

*(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 month** [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.”

50. From the bare perusal of the aforesaid section, it is evident that for a default of every month in payment of maintenance, the defaulter can be sent to one month imprisonment. Therefore, for every month, the defaulter is liable to be sent to one month imprisonment.

51. The stark distinction between execution proceedings for an Order under Section 125 CrPC and Section 24 HMA, is evident from the language used in the relevant sections. The present Order being under Section 24 HMA, the Execution Petition is governed by the provisions of CPC, 1908 which does not provide for re-arrest once the person has undergone the maximum period of three months of civil imprisonment.

52. We, therefore, find that impugned Order of detention of the appellant/husband sentencing him to undergo civil imprisonment for another period three months in compliance of the same maintenance Decree is not justified. The impugned Order dated 30.09.2022 is hereby set aside.

53. Before we part with this Judgment, it is noted in Order dated 30.09.2022 passed at 3.30 PM by the learned Judge, Family Court that learned counsel for JD appeared with Demand Draft of Rs.2 lacs in the name



of DH and submitted that order taking the JD into custody be suspended till they approach the High Court with respect to clarification regarding the position of law about civil imprisonment in the case of monthly maintenance granted to DH. Learned Judge is not a layman, he is duty bound to know the position of law, and, there was no necessity to record said submission of learned counsel for JD. As the learned Judge has suspended order of taking JD in custody on taking Demand Draft of Rs. 2 Lacs in favour of DH and a separate undertaking of the JD was also recorded to appear on the next date of hearing, we refrain from commenting much.

54. Accordingly, the present appeal is allowed and the pending application is disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

FEBRUARY 01, 2024
S.Sharma/nk