

**(2013) 03 P&H CK 0057**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** C.R.R. No. (F) 9 of 2013 (O and M)

Sunit Kumar

APPELLANT

Vs

Rita and Others

RESPONDENT

**Date of Decision:** March 25, 2013

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 125(3), 125(3)(c)

**Citation:** (2014) 2 Crimes 399 : (2013) 3 RCR(Criminal) 51

**Hon'ble Judges:** Jitendra Chauhan, J

**Bench:** Single Bench

**Advocate:** Saurabh Khurana with Mr. Amar Nath Kumar father of the Petitioner, for the Appellant; Vikram Sheoran, Advocate for Respondent No. 1 and 2 and Smt. Rita, Respondent No. 1 for her behalf and on behalf of Respondent No. 2, for the Respondent

**Final Decision:** Dismissed

**Judgement**

Jitendra Chauhan, J.

The present revision petition has been preferred for setting aside of order dated 27.02.2013, passed by the learned District Judge, Family Court, Hisar, whereby, petitioner was ordered to undergo imprisonment of twelve months on account of non-payment of arrears of maintenance to his wife and the minor daughter, as ordered by the trial court. The admitted facts as taken out of the impugned order are as under:-

2. In execution application No. 55 dated 04.02.2013 the respondents herein i.e. the wife and the minor daughter of the present petitioner i.e. the husband sought recovery of arrears of maintenance allowance of Rs. 3,60,000/- for the period from 19.05.2009 to 03.02.2013 @ Rs. 8,000/- per month as per courts order dated 04.12.2012 inter alia pleading that an amount of Rs. 22,000/- had already been paid by the CRR No. (F) 9 of 2013 (O&M) 2 husband and now a balance amount of Rs. 3,38,000/- is still due against the husband (the present petitioner). Admittedly the

arrears of maintenance allowance if calculated @ Rs. 8,000/- per month for the period from 19.05.2009 to 19.01.2013 comes to Rs. 3,52,000/-and out of the said arrears of maintenance the respondents herein had already received a sum of Rs. 22,000/- from the husband, the petitioner herein and now an amount of Rs. 3,30,000/- is due against the husband the petitioner herein on account of arrears of maintenance allowance from the period from 19.05.2009 to 19.01.2013. This amount became due and payable when on 04.12.2012, a final order awarding maintenance allowance to the respondents (wife and minor child) was passed against the husband. In an execution application, the husband/petitioner had made a statement to the effect that he is not in a position to pay the arrears of maintenance. So, finding no other alternative the District Judge-cum-Family Court, Hissar, vide order dated 27.02.2013, sentenced the husband to undergo imprisonment for a period of twelve months on account of his failure to pay the arrears of maintenance with the condition that in case the husband clears the said amount of Rs. 3,30,000/-, he shall be released, forthwith.

3. Aggrieved against the order dated 27.02.2013, the husband/petitioner has filed this Revision Petition on which notice of motion was issued to the respondents on 19.03.2013, which reads as under:

Learned counsel for the petitioner on instructions from Amar Nath Kumar, father of the petitioner, undertook to deposit Rs. 50,000/-before the next date of hearing and to pay the remaining arrears of maintenance in installments as directed by this Hon'ble Court.

Notice of motion for 25.03.2013.

Mr. Vikram Sheoran, Advocate accepts notice on behalf of respondent.

The petitioner is directed to prepare a demand draft of Rs. 50,000/- in favour of wife Smt. Rita and to bring the same in court on the next date of hearing.

Sd/-

Judg

19.3.2013

4. Today the counsel for the petitioner states that the father of the petitioner who is present in the Court today handed over him a draft of Rs. 50,000/- for tendering in court, only if this Court orders for release of the petitioner. The wife who is present in court states that she is a house wife residing with her parents and she has no means to maintain herself and her minor daughter. The wife states that her husband was an Income Tax payee business man, but after starting of this litigation between them, in order to avoid the liability of maintenance, he claiming himself to be a pauper in the court, though, he has sufficient income from his handloom business. This court is not inclined to accept such type of conditional bargaining plea in maintenance cases, where the conduct of the husband is to willfully disobey

the order of the Court. During the pendency of the trial he had sufficient opportunity to make part payment of the interim maintenance. But, the petitioner did not pay it for the best reasons known to him, resulting in harassment to the wife and the minor child. When the counsel for the petitioner was offered to make some part payment of the maintenance allowance, he, on instructions from father of the petitioner, refused to pay the maintenance allowance to the respondents. So, the prayer of the counsel for the Petitioner to release the petitioner on interim bail is hereby declined.

5. This Court has heard the Ld. Counsel for the parties on merits, also.

6. Learned counsel for the petitioner has argued that the Ld. Executing Court has illegally sentenced the Petitioner, the court has no power to sentence the accused in lieu of maintenance for more than one month and the wife and her minor child can not claim arrears of maintenance beyond one year. He referred to case [Shahada Khatoon and Others Vs. Amjad Ali and Others,](#)

7. Learned counsel for the respondents argued that the respondent wife is a house-wife having no means to maintain herself and her minor child who is suffering from asthmatic problem. He further argued that the respondents are at the verge of starvation.

8. This Court has carefully considered the submissions of the learned counsel for the parties. In the identical set of facts, Hon"ble the Supreme Court in [Kuldip Kaur Vs. Surinder Singh and Another,](#) observed as under:-

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 realised 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 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.

9. The main argument of the learned counsel for the husband petitioner is that the respondents cannot claim maintenance beyond the period of one year. He draws the attention of this court u/s 125(3) of the Cr.P.C. which is as under:-

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.

10. It is relevant to mention here that respondent No. 1 wife and the minor daughter instituted petition u/s 125 of the Code, on 19.05.2009. Vide order dated 07.08.2009, the husband was directed to pay a sum of Rs. 4000/-per month to the minor daughter as interim maintenance allowance from the date of filling of the main petition. Vide order dated 04.12.2012 the Ld. District Judge, Family Court, Hissar directed the husband(the petitioner herein) to pay a sum of Rs. 4000/- per month to each of the petitioner as maintenance allowance from the date of filling of the petition i.e.19.05.2009. So the lump sum amount became due on 04.12.2012, on which date the Ld. District Judge, Family Court, Hissar, finally awarded maintenance allowance to the respondents herein. A perusal of the impugned order dated 27.02.2013, (Annexure P1) shows that the respondents filed an execution application in this case on 28.01.2013, which was registered as Execution Application No. 55 dated 04.02.2013. So, it is apparent that execution application was filed well within one year from the date, the lump sum amount of maintenance under the orders of court of competent jurisdiction, became due i.e. 04.12.2012, when the maintenance allowance was finally allowed. Hence, the arguments of the Ld. counsel for the petitioner has no force that the respondents cannot claim maintenance beyond the period of one year. The Ld. court has awarded maintenance from the date of filing the application u/s 125 of the Code, and both the respondents were held to be entitled to receive the maintenance at the rate of Rs. 8000/- per month from the date of filing the application i.e. 19.05.2009. As per the Full Bench of the Hon"ble Apex Court in Kuldeep Kaur Vs. Surinder Singh and Another, , it is made clear that section 125(3)(c) of the Code, is applicable only for issuing warrant, for which, there should be an application made by the claimant and such amount shall be levied

within a period of one year from the date on which it became due. However, for claiming arrears of maintenance, there is no such one year limitation as held in Kuldip Kaur's case (supra).

11. The next argument of the Ld. Counsel for the petitioner is that the Ld. Executing court cannot sentence the husband beyond the period of one month. Again the argument has no force. In the case of Shantha @ Ushadevi and Another Vs. B.G. Shivananjappa, the Apex Court observed that it must be born in mind that section 125 of the Criminal Procedure Code is a measure of social legislation and it has to be construed liberally for the welfare and benefit of the wife and daughter. The arrears of maintenance which is payable to the respondents is for about 45 months. 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. 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 survive. The first and foremost duty of the husband is to maintain the wife and the child. He may beg, borrow or steal. In this case the respondent has been sentenced to undergo imprisonment for a period of twelve months from 27.2.2013 on account of failure to pay the arrears of maintenance of Rs. 3,30,000/- for the period from 19.5.2009 to 19.1.2013, which is a just and appropriate order, in default to pay the maintenance allowance. In other words, it is open for the court to award sentence up to a maximum of one month for each month of default committed by the person ordered to pay maintenance and the maximum limit of sentence of one month referred to in sub section (3) of section 125 of the Code will be applicable for each month of default. The maintenance claim has to be construed continuing liability which becomes due at the end of every month. So, the defaulter has to suffer imprisonment on each default to pay the maintenance. On undergoing imprisonment in default of maintenance will not wipe out the liability which shall subsist till the payment is made.

12. The case law cited by the Ld. Counsel for the petitioner is distinguishable from the present case. Keeping in view the above discussion, this Court is of the opinion that the petitioner is not entitled to any discretionary relief. There is no illegality in the order dated 27.02.2013 passed by the learned District Judge, Family Court, which do not warrant any interference by this Court. In the result, this Criminal Revision is liable to be dismissed. Accordingly, the same is dismissed.