

(2016) 11 P&H CK 0096

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 7043 of 2016 (O&M)

Jasbir Singh Grewal

APPELLANT

Vs

Daljot Kaur

RESPONDENT

Date of Decision: Nov. 7, 2016

Acts Referred:

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

Citation: (2017) 1 AICLR 235 : (2017) 1 HLR 128 : (2016) 4 LawHerald 3572 : (2017) 2 PLR 865 : (2017) 2 RCRCivil 88 : (2017) 2 RCRCriminal 137

Hon'ble Judges: Mr. Raj Mohan Singh, J.

Bench: Single Bench

Advocate: Mr. Ashish Pal Kaushal, Advocate, for the Petitioner; Mr. Surjit Singh Dhillon father of the respondent-in-person, for the Respondent

Final Decision: Dismissed

Judgement

Raj Mohan Singh, J. - Petitioner has assailed order dated 21.07.2016 passed by Civil Judge (Jr. Divn.) Ludhiana vide which objections filed by him and the application for his release from civil imprisonment were dismissed.

2. Brief facts as gathered from the record are that the petitioner is the husband of the respondent-Daljot Kaur. Respondent-wife filed a petition under Section 125 Cr.P.C. for grant of maintenance for herself as well as for Naunihal Singh @ Gurpartap Singh minor son of the parties. The marriage between the parties was solemnized on 23.11.2004 at Ludhiana. After due contest, the Judicial Magistrate Ist Class, Ludhiana vide order dated 17.05.2011 granted an amount of Rs. 3,000/- per month to the respondent and an amount of Rs. 2,000/- per month as maintenance to the minor son from the date of institution of the petition.

3. Petitioner did not pay the arrears of maintenance. Execution petition was filed by the respondent. Petitioner was sent to civil prison for not paying the amount of maintenance. At that time, the petitioner was arrested from the Central Jail,

Ludhiana as he was confined in a criminal case titled as State v. Jasbir Singh and others arising out of FIR No. 127 of 2006. Petitioner was produced by the Jail Authorities and he was sent to judicial custody for 30 days as he failed to make good the amount in execution.

4. On 07.09.2015, petitioner was again produced before the executing Court after completion of 30 days and he was ordered to be released, if not required in any other case. However he was arrested in the main case arising out of FIR No.127 of 2006 and was kept confined in the jail in the State case because the regular bail was pending before this Court. On 10.05.2016, the bail was granted by this Court. Release order was issued by the trial Court after furnishing bail bonds by the petitioner and he was released by the Jail Authorities on 24.05.2016.

5. I have learned counsel for the petitioner and respondent's father who appeared-in-person.

6. Learned counsel for the petitioner submitted that only remedy available to the respondent/decreed-holder was after expiry of one month for which she was required to approach once again to the Magistrate for similar relief. The Magistrate cannot impose sentence for more than one month for one default. Learned counsel relied upon *Shahad Khatoon and others v. Amjad Ali and others*, 1999(5) SCC 672 and contended that the power of the Magistrate cannot be enlarged beyond the scope of Section 125(3) Cr.P.C., i.e. to impose imprisonment for a term which may extend to one month or until the payment, if sooner made.

7. Learned counsel for the petitioner further contended that the only remedy available with the respondent was to again approach to the Magistrate after expiry of one month for breach and non-compliance of the order. Learned Magistrate was not empowered to impose sentence for more than one month in one execution. Learned counsel further relied upon *Dilip Kumar v. Family Court, Gorakhpur*, 2001(1) RCR (Criminal) 274, on the same analogy.

8. On the other hand, father of the respondent relied upon *Manoj Kumar Gupta v. Kamlesh Kumari and Anr.*, 2012(1) Criminal Court Cases, 735 (Allahabad); *Poongodi and another v. Thangavel*, 2013(4) RCR (Criminal) 505; *Shantha @ Ushadevi & Anr. v. B.G. Shivananjappa*, 2005(2) Civil Court Cases 430 (SC); *Alora Sundaran v. Mammali Sumathi & Anr.*, 2006(4) RCR (Criminal) 63 (Kerala); *Narayanan v. State of Kerala*, 2008(3) Criminal Court Cases 321; *Gorakshnath Khandu Bagal v. State of Maharashtra and others*, 2005(4) RCR (Criminal) 425; *Sunit Kumar v. Rita and others*, 2013(3) RCR (Criminal) 51 (Punjab & Haryana) and *C. Ali v. State of Kerala (DB)* 2014(2) RCR (Criminal) 235 to contend that limitation on powers of Magistrate to impose sentence is upto maximum one month relatable to each month of default in payment of maintenance. It is always open for Magistrate to impose upto maximum of one month for each month of default and a composite order can be passed by the Magistrate.

9. On account of non-payment of maintenance of arrears thereof, petitioner was again sought to be arrested. The execution petition pertained to dated 17.05.2011 vide which the total amount of Rs. 5,000/- per month was awarded in favour of the respondent and minor child. The amount was ordered to be paid from the date of filing of the petition i.e. 11.07.2006. It is a settled principle of law that for each month of default, one month imprisonment has to be awarded. There is huge accumulation of amount i.e. more than Rs. 10 lacs towards arrears of maintenance.

10. The ratio of Shahad Khatoon and others" case (supra) was explained with reference to the ratio culled out by the Hon"ble Apex Court in Shantha @ Ushadevi & Anr."s case (supra). Section 125 Cr.P.C. is a measure of social legislation and it has to be construed liberally for the welfare and benefit of the wife and the children. It was held that it would be unreasonable to insist on filing of successive applications when the liability to pay the maintenance as per the order of the Court under Section 125(1) Cr.P.C., is a continuing liability. The right of recovery does not extinguish with the imprisonment of the husband for one month. Proceedings under Section 125 Cr.P.C., is in the nature of continuing liability for which there is no necessity of filing separate applications as held in Shantha @ Ushadevi & Anr."s case (supra).

11. In the aforesaid precedents of different High Courts and Hon"ble Apex Court, the ratio culled out was that for each month of default, there would be maximum sentence of one month imprisonment. Husband can be sentenced for each one month of default. First proviso to Section 125(3) Cr.P.C., does not put a cap on the maximum sentence that can be imposed for default in payment of maintenance. Wife can file one application for recovery of amount due for number of months as arrears of maintenance. Magistrate is competent to award punishment/ imprisonment to the husband for more than one month, however imprisonment can be reduced when amount is paid during imprisonment.

12. Apparently maintenance was awarded vide order dated 17.05.2011 and the arrears of maintenance were to be paid w.e.f. 11.07.2006. Arrears have not been cleared and till date there is huge accumulation of amount more than Rs. 10 lacs towards arrears of maintenance. Petitioner remained proclaimed offender in FIR No.127/2006 for five years. Petitioner went to England in January and he was arrested by the Police only on 16.06.2015. He was granted bail only on 10.05.2016.

13. The ratio of Shahad Khatoon and others" case (supra) was explained in subsequent judgments of Shantha @ Ushadevi & Anr."s case (supra). This Court also expressed the same view in Sunit Kumar"s case (supra).

14. In view of precedents as highlighted above, this Court is not in agreement with the contention raised by the learned counsel for the petitioner.

15. No error of jurisdiction can be pointed out in the impugned order dated 21.07.2016 passed by Civil Judge (Jr. Divn.) Ludhiana. This revision petition is

accordingly dismissed.