
(1989) 08 P&H CK 0161

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 2320-M of 1989

Gurdev Singh

APPELLANT

Vs

Manjit Kaur and Others

RESPONDENT

Date of Decision : 10-08-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125(2), 482

Citation : (1990) 1 DMC 369 : (1989) 2 RCR(Criminal) 514

Hon'ble Judges : S.S. Grewal, J

Bench : Single Bench

Advocate : D.N. Ganeriwala, for the Appellant; R.K. Jain, for the Respondent

Judgement

S.S. Grewal, J.—This petition u/s 482 of the Code of Criminal Procedure (for short "the Code") relates to reduction of sentence awarded by the Judicial Magistrate 1st Class, Hissar for non-payment of arrears of interim maintenance from November 1987 to April 1988 from nine months simple imprisonment to the period already undergone by him in the jail.

2. In brief, the facts relevant for the disposal of this petition, are, that the petitioner has not so far made the payment of arrears of interim maintenance, as referred to above, for nine months. He had filed a revision petitioner against the order of the Judicial Magistrate 1st Class, Hissar (copy Annexure P-3) dated 8-8-1988 which was dismissed by the Sessions Judge, Hissar vide his order dated 30-1-1989 (copy Annexure P-1). Aggrieved against the orders passed by the Courts below, the petitioner-husband has moved the present petitioner.

3. Counsel for the parties were heard.

4. The sole ground on which the impugned orders passed by the Courts below have been assailed relates to the interpretation of Sub-section (3) of Section 125 of the Code of Criminal Procedure which for the sake of convenience is reproduced as under :

"125. Order for maintenance of wives, children and parents--

(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's allowance 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 made 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 wife's refusal to live with him."

5. It was submitted by the counsel for the petitioner-husband that the learned Magistrate at the most could award a sentence of imprisonment for a term of one month to the petitioner in respect of arrears of interim maintenance referred to above and that the orders passed by the Courts below directing the petitioner-husband to undergo simple imprisonment for nine months cannot be legally sustained. This argument is devoid of any merit. While dealing with this question, the Full Bench of Bombay High Court in *In Re: Trikamlal Maneklal and Another*, held that in the order by the Magistrate concerning the recovery of arrears of maintenance, the Magistrate sentenced the respondent to undergo imprisonment for a term of 15 days in respect of each month for which the amount remained unpaid. The afore cited authority fully covers the facts of the case in hand. The impugned orders passed by the Courts below cannot be said to be illegal or without jurisdiction. However, both the Court below did not take into consideration the hardship of the petitioner-husband while directing him to undergo simple imprisonment for the entire period of nine months concerning which the arrears of maintenance remained due to the respondent-wife and their children.

6. On the basis of the Full Bench decision in *Karson Ramji Chawda's case* (supra), it is directed that the petitioner will have to undergo 15 days simple imprisonment in respect of each month for which the maintenance allowance remained unpaid by him, i.e. he would undergo S.I. in all for a period of 4-1/2 months and not nine months, as directed by the Courts below.

7. Except for this modification in the matter of sentence, I do not find any merit in this petition and the same is hereby dismissed with no order as to costs.

However, in case the petitioner-husband does not surrender before the executing Court within three weeks from today, the order concerning the reduction of sentence awarded to the petitioner shall not be deemed to have been passed. A copy of the order be given dasti.