

Smt. Kuldip Kaur

Vs

Surinder Singh and Another

Criminal Appeal No. 4 Of 1983

(M. P. Thakkar, S. Natarajan JJ)

03.11.1988

JUDGMENT

THAKKAR, J. –

1. We have yet to come across a case of a wife wronged by her husband and a child wronged by his father who had to suffer also at the hands of the court. For, while the trial Magistrate has disposed of the matter in a very cursory manner taking a thoroughly untenable and unjust view, the High Court has rejected the revisional application summarily. Both the courts have done so notwithstanding the fact that the point involved (whether detaining the husband in jail for failing to pay the arrears of maintenance passed in her favour even though the arrears of maintenance allowance remain unrecovered in fact) is not capable of being answered against the petitioner.

2. The Metropolitan Magistrate (Shri L. D. Malik) in his order dated July 4, 1981 recorded a clear finding that the husband was guilty of cruelty in the context of the demand for dowry. He observed :

I have heard the attorney for the petitioner and carefully examined the evidence produced by the petitioner and find that the evidence on record is sufficient to show that the petitioner was maltreated and neglected by the respondent. The evidence on record indicates that the petitioner was maltreated and neglected by the respondent. The evidence on record indicates that the petitioner was maltreated on account of less dowry and was not looked after properly during the course of her advanced stage of pregnancy. The evidence also indicates that the respondent did not bother about the petitioner who gave birth to a male child. The statements of the witnesses which include that of the petitioner and her father are un rebutted by any evidence on behalf of the respondent and the averments of the respondent in his reply are unsupported by any evidence since the respondent did not produce any evidence having been proceeded ex parte on account of his absence. The cross-examination of the witnesses of the petitioner also does not reveal anything so as to support the allegations of the respondent in his reply.

In the context of this finding sum of Rs. 200 to the wife and Rs. 75 to the son were awarded by the aforesaid order.

3. The respondent-husband was in arrears to the tune of Rs. 5090. The wife moved an application for execution of the order for maintenance in order to recover the arrears of maintenance. In the course of enforcement of the order of maintenance dated January 17, 1982 the husband was sentenced to suffer simple imprisonment for one month pursuant to the order dated January 17,

1982 of the Metropolitan Magistrate (Shri L. D. Malik). The operative portion of the order reads as under :

The J. D. Surinder Singh, s/o Bhagwan Singh is accordingly sentenced to SI for one month and shall be released if he makes payment of Rs. 5090 as maintenance due from him up to January 16, 1982. Both the execution files pending are disposed of accordingly except that payment of Rs. 400 remains to be paid to DH who shall appear personally for obtaining the amount.

The wife prayed for recovery of the arrears, whereupon the Metropolitan Magistrate rejected her prayer on the ground that the claim for arrears stood satisfied upon the husband having been sent to jail. Says the Metropolitan Magistrate :

The J.D. was sentenced to jail for one month and the order of the court dated January 17, 1982 are material to be mentioned here vide which it has been decided that the J.D. was sentenced for non-payment of maintenance allowance Rs. 5090 due from him up to January 16, 1982. The J.D. remained in custody for one month and as per orders dated January 17, 1982, sum of Rs. 5090 stands satisfied. As per orders of the court, the J.D. was directed to pay Rs. 400 remaining amount. This amount was paid on January 19, 1982 by the J.D. to the decreeholder.

The wife who wanted the maintenance amount for maintaining herself and the minor child approached the High Court by way of a revisional application. Naturally the need of the wife for a few crumbs of bread for herself and spoonfuls of milk for her minor son were not satisfied by the imprisonment of the husband for one month. These needs would be satisfied only upon the economic means for purchasing the crumbs of bread and spoonfuls of milk being provided by effecting the recovery of the maintenance amount. The learned Metropolitan Magistrate having failed to do so, the wife approached the High Court by way of revisional application. Even though no support was sought from any provision of law and it was assumed that the claim for recovery stood satisfied upon the husband being sent to jail, the High Court rejected the revisional application summarily without a speaking order, on July 29, 1982. It is this order which has been subjected to appeal by special leave.

4. We fail to comprehend how such an important question arising in the context of the petition preferred by a helpless woman could have been summarily rejected by the High court by a non-speaking order. To say the least of it, it betrays total lack of sensitivity on the part of the High Court to the plight of a helpless woman. Were it not so, the High Court would have at least passed a speaking order unfolding the rational process which made the High Court feel helpless in helpless woman and a helpless child. The legal position may now be examined. Section 125 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') provides for an order for maintenance to wives, children and parents. A Magistrate upon being satisfied about the proof of negligence or refusal on the part of the person from whom monthly allowance for the maintenance of the wife, child, father or mother as the case maybe, is due, upon being satisfied about the fact that the person has sufficient means, may pass an order for monthly allowance under sub-sections (1) and (2) of Section 125 of the Code. Section 128 of the code provides for enforcement of such an order of maintenance passed by a competent Magistrate. The section reads as under :

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 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.

Sub-section (3) to Section 125 deals with the problem arising in the context of a person against whom order for maintenance allowance has been made failing without sufficient cause to comply with the order. It deserves to be reproduced to the extent material for the present purposes :

125(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 :

5. The scheme of the provisions embodied in Chapter IX of the Code comprising Sections 125 to 128 which constitutes a complete code in itself requires to be comprehended. It deals with three questions, viz. : (1) adjudication as regards the liability to pay monthly allowance to the neglected wife and child etc., (2) the execution of the order on recovery of monthly allowance, and (3) the mode of execution of an order for monthly allowance. Now, one of the modes for enforcing the order of maintenance allowance with a view to effect recovery thereof is to impose a sentence of jail on the person liable to pay the monthly allowances.

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 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. A 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. Commonsense 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 discharged 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. That is the

reason why we set aside the order under appeal and passed an order in the following terms :

Heard both the sides.

The appeal is allowed. The order passed by the learned Magistrate as confirmed by the High Court in exercise of its revisional jurisdiction to the effect that the amount of monthly allowance payable under Section 125 of the Code of Criminal Procedure is wiped out and is not recoverable any more by reason of the fact that respondent 1, Surinder Singh, was sent to jail in exercise of the powers under Section 125 of the Code of Criminal Procedure is set aside. In our opinion, respondent 1, husband of appellant, is not absolved of his liability to pay the monthly allowance by reason of his undergoing a sentence of jail and the amount is still recoverable notwithstanding the fact that respondent 1 husband who is liable to pay the monthly allowance has undergone a sentence of jail for failure to pay the same. Our reasons for reaching this conclusion will follow.

So far as the amount of monthly allowance awarded in this particular case is concerned, by consent of parties, we pass the following order in regard to future payments with effect from August 15, 1986.

We direct that respondent 1, Surinder Singh shall pay Rs. 275 (Rs. 200 for the wife and Rs. 75 for the child) as and by way of maintenance to the appellant Smt. Kuldip Kaur commencing from August 15, 1986. The amount of Rs. 275 shall be paid by the 15th of every succeeding month. On failure to pay any monthly allowance for any month hereafter on the part of respondent 1, Surinder Singh, the learned Metropolitan Magistrate shall issue a warrant for his arrest, cause him to be arrested and put in jail for his failure to comply with this Court's order and he shall not be released till he makes the payment.

With regard to the arrears which have become due till August 15, 1986, learned counsel for the appellant states that having regard to the fact that respondent 1, has agreed to the aforesaid consent order, the appellant will not apply for the respondent being sent to jail under Section 125 of the Code of Criminal Procedure but will reserve the liberty to realize the said amount (Rs. 5090 plus the difference between the amount that became due and the amount actually paid under the interim order) under the law except by seeking an order for sending respondent 1 to jail.

The appeal will stand disposed of accordingly.

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