

**Mohd. Hasib Vs. Rubina**

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**SooperKanoon Citation :** [sooperkanoon.com/509192](http://sooperkanoon.com/509192)

**Court :** Madhya Pradesh

**Decided On :** Nov-05-2008

**Reported in :** 2009(1)MPHT58

**Judge :** S.C. Sinho, J.

**Appellant :** Mohd. Hasib

**Respondent :** Rubina

**Judgement :**

ORDER

**S.C. Sinho, J.**

1. Invoking extra-ordinary jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred as 'the Code'). Petitioner has filed this petition for quashing the execution proceedings pending in the Court of JMFC, Bhopal, in MJC No. 21/06.

2. Respondent/divorced wife filed a MJC No. 4/03 against her husband under Section 3 of The Muslim Women (Protection of Rights on Divorce) Act, 1986 (referred as 'the Act'), before JMFC, Bhopal vide order dated 30-9-2003. Respondent was granted Rs. 25,786/- Maihar amount, Rs. 6,000/- maintenance for Iddat period and Rs. 3,00,000/- for reasonable and fair provisions, and maintenance etc. It was also directed that petitioner shall return dowry items.

3. However, the petitioner did not comply the order and respondent moved an application for execution of the order for payment of maintenance as MJC No. 12/05, petitioner was sentenced to one year imprisonment vide order dated 10-8-2005. Petitioner has undergone whole sentence of one year and so far only deposited Rs. 7,200/-.

4. On 22-7-2006 respondent has filed another application for execution of order dated 30-9-2003 in MJC No. 4/2002 and prayed that the aforesaid amount should be recovered otherwise petitioner should be again sent to imprisonment for one year.

5. Learned Counsel for the petitioner submitted that petitioner has already undergone one year imprisonment as provided under Section 3(4) of the Act and respondent has further moved aforesaid application for execution of order dated 30-9-2003 with a request that petitioner be again sent for imprisonment for one year.

6. The crucial question before me that whether the petitioner is liable to serve further imprisonment for the same default if amount due is not paid or recovered in the execution proceedings. The perusal of the relevant provisions of the Act will be required which are as under:

Section 3. Mahr or other properties of Muslim woman to be given to her at the time of divorce.-

(1) \*\*\* \*\*\*(2) \*\*\* \*\*\*(3) \*\*\* \*\*\*(4) If any person against whom an order has been made under Sub-section (3) fails without sufficient cause to comply with the order, the Magistrate may issue a warrant for levying the amount of maintenance or mahr or dower due in the manner provided for levying fines under the Code of Criminal Procedure, 1973 (2 of 1974) and may sentence such person, for the whole or part of an amount remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one year or until payment if sooner made, subject to such person being heard in defence and the said sentence being imposed according to the provisions of the said Code.

(Underlined by Court)

7. Arrears of maintenance is recoverable in the same manner provided for levying fine under the Code.

8. Section 421(1) of the Code is about warrant for levy of fine is reproduced below:

421. Warrant for levy of fine.- (1) When an offender has been sentenced to pay a fine the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may-

(a) issue a warrant for the levy of the amount by attachment and sale of any moveable property belonging to the offender.

(2) The State Government may make rules regulating the manner in which warrants under Clause (a) of Sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under Clause (b) of Sub-section (1), the Collector shall realize the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

9. A distinction has to be drawn between a mode of enforcing recovery and sentencing a person to jail. 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 after making actual payment of amount to the wife.

10. The only purpose of sending a person to jail is to oblige a person liable to pay the amount who refused to comply with the order. The purpose of sending him to jail is not to exonerate him from the liability of payment. A sentence of jail is no substitute for recovery of amount. This amount is granted to enable the wife and children to maintain themselves.

11. Thus it is clear that petitioner/husband of respondent/wife cannot be absolved from his liability to pay the amount which is still recoverable notwithstanding the fact that he has undergone the imprisonment of jail for failure to same.

12. Thus, it is clear that because the petitioner has already undergone imprisonment for one year under Section 3(4) of the Act, 1986 therefore, he cannot be sent to jail again, but so far as the contention of learned Counsel for the petitioner Shri S. Sharma is concerned that petitioner cannot be sent again to jail is to be accepted. However, it is made clear that respondent is free to recover the balance amount in accordance with the law except by seeking an order for petitioner to jail.

13. For the reasons stated above, the petition under Section 482 of the Cr.PC is partly allowed. The learned Trial Magistrate, Bhopal shall proceed according to law in the light of observation and execute order dated 30-9-2003 passed in MJC No. 4/2003. However, the respondent will not apply that petitioner be sent to jail again under Section 3(4) of the Act in default of payment.

14. With the aforesaid direction, this petition is partly allowed.