

Govind Sahai Vs. Prem Devi

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Court : Rajasthan

Decided On : Jan-06-1987

Reported in : 1988CriLJ638; 1987(1)WLN210; 1989WLN(UC)510

Judge : Navin Chandra Sharma, J.

Appellant : Govind Sahai

Respondent : Prem Devi

Judgement :

ORDER

Navin Chandra Sharma, J.

1. This is a petition by Govind Sahai under Section 482, Cr.P.C. for quashing the order of the Judicial Magistrate First Class, Malpura issuing a warrant to the employer of the petitioner for deducting an amount of Rs. 500/- from the salary of the petitioner every month and to remit the same to the Court and also further to deduct an amount of maintenance amounting to Rs. 10,000/- and also to remit this instalment amount to the Court.

2. Facts, in brief, are that Smt. Prem Devi non-petitioner filed an application for grant of maintenance under Section 125, Cr.P.C. on Mar. 21, 1984 before the Judicial Magistrate Malpura Ultimately the Judicial Magistrate by his order dated Nov. 22, 1984 allowed an amount of Rs. 300/- as maintenance for Smt. Prem Devi

and Rs. 20 per month for her daughter. The petitioner had filed application under Section 482, Cr.P.C. before this Court against the said order which was dismissed on April 18, 1985. On Dec. 12, 1985 Prem Devi non-petitioner made an application under Section 125(3), Cr.P.C. for issuing a warrant for levying an amount of Rs. 10,000/- as arrears of maintenance which had fallen due with effect from Mar. 21, 1984 i.e. the date on which the application was filed, to the date of making the subsequent application under Section 125(3) and also to recover the monthly maintenance allowances of Rs. 500/-. The petitioner is an employee of M/s. Hindustan Aluminium Company, Renukoot. The Judicial Magistrate, Malpura issued notice to the petitioner which was not received back after service. Thereafter he sent a notice by registered post. Neither the petitioner appeared before the Magistrate nor the acknowledgment receipt was received back. Ultimately on Feb. 5, 1986 the Judicial Magistrate ordered for the issue of a warrant addressed to the Chairman M/s. Hindustan Aluminium Company, Renukoot requiring him to deduct an amount of Rs. 500/- from the salary of the petitioner and to remit the said amount to the Court. With regard to arrears of maintenance allowance amounting to Rs. 10,000/- for the period from Mar. 21, 1984 to Dec. 12, 1985 it was directed in the warrant that the Chairman should remit this amount by deducting an amount of Rs. 500/- per month as instalment and remit the same to his Court. It is against this order that Govind Sahai petitioner has invoked the inherent jurisdiction of this Court.

3. I have heard Shri Rajkumar Pareek and Shri D. L. Bardhar, learned Counsel appearing for the parties.

4. Two contentions have been raised by the learned Counsel for the petitioner. The first contention raised is that the non-petitioner filed application under Section 125(3), Cr.P.G on Dec. 12, 1985. No notice was served on the petitioner before the Magistrate passed the impugned order on Feb. 5, 1986. The second contention raised is that the application under Section 125(3), Cr.P.C. was not made within a period of one year from the date on which the amount became due.

5. The first contention of the learned Counsel for the petitioner has no force in it for the reason that there is no express provision for issue of any notice to the

petitioner before issuing a warrant. In any event, the petitioner was at liberty to show cause before the Magistrate which he has not done. Even in this petition, no cause whatsoever has been mentioned as to why he failed to comply with the order of the Judicial Magistrate, Malpura dt. Nov. 22, 1984.

6. However, there is some substance in the second contention of the learned Counsel for the petitioner. Proviso to Section 125(3) expressly provides that no warrant shall be issued for the recovery of any amount due under Section 125 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. It may be mentioned here that the Judicial Magistrate, Malpura by his order dt. Nov. 22, 1984 had granted maintenance to the non-petitioner for herself and for the daughter with retrospective effect i.e. with effect from March 21, 1984 when the non-petitioner had made the application for maintenance under Section 125(1) of the Code. The arrears of maintenance from March 21, 1984 to November 22, 1984 became due on Nov. 22, 1984 when the Judicial Magistrate passed the order allowing maintenance. The application under Section 125(3) of the Code was made by the non-petitioner before the Judicial Magistrate on Dec. 12, 1985. This application was clearly beyond one year from the date on which the arrears up to Nov. 20, 1984 could be issued by the Magistrate. He could only issue warrant for the levy of the maintenance amount which had become due with effect from Dec. 21, 1984 because only in that respect the application of the non-petitioner presented on Dec. 12, 1985 was within limitation.

7. It may be next mentioned that if Section 125(3) Cr. P.C. provides that if any person ordered to pay maintenance fails without sufficient cause to comply with the order the 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. So far as future maintenance allowance is concerned, the monthly amount of maintenance becomes due on 22nd of every month and, therefore, the maintenance amount with respect to the period from November 21, 1984 to Dec. 20, 1985 will become

due only on Dec. 22, 1985. In the instant case, the Judicial Magistrate had passed a recurring or running order assuming that the petitioner would commit a breach of the order in future as well. This could not be done by the Judicial Magistrate because in view of the express language of Section 125(3) for every breach of the order, the Judicial Magistrate has to issue a warrant for levying the amount due in the manner provided for levying fines. It may be that with respect to the future period, the petitioner may himself voluntarily pay the maintenance amount to avoid the sentence of imprisonment which is the consequence of non-payment of the whole or any part of each month's allowance. The order of the Judicial Magistrate, Malpura directing the Chairman of Hindustan Allimutive Company Renikoot for deducting the amount of Rs. 500/- every month from the salary of the petitioner and to remit the amount to his court is against the provisions of Section 125(3) Cr. P.C. It may also be mentioned that the petitioner has not paid any maintenance allowance to the non-petitioner even after the date she had filed application before the Judicial Magistrate on Dec. 12, 1985. The Magistrate can of course include in the warrant the amount of arrears of maintenance which had become due for the period from Dec. 12, 1985 to date.

8. The net result is that this petition under Section 482 Cr. P.C. filed by Govind Sahai alias Govind Narain is partly allowed and the Judicial Magistrate, Malpura is directed that he should modify his warrant and issue a modified warrant for the recovery of arrears of maintenance allowance only with respect to the period starting from Nov. 21, 1984 to date. He shall not issue any warrant for levying the amount of arrears of maintenance for the period from Mar. 21, 1984 to Nov. 20, 1984 because the application for the recovery of arrears of maintenance for these eight months has been made by the non-petitioner to his Court after the period of one year computed from Nov. 22, 1984 had expired. Any amount already paid by the non-petitioner or deposited in Court, if any, would be adjusted against the arrears so found due and would be paid to the non-petitioner forthwith.