

Before S. S. Grewal, J.

GURVINDER SINGH,—Petitioner.

versus

MURTI AND OTHERS,—Respondents.

Criminal Miscellaneous No. 3989-M of 1989.

15th January, 1990.

*Code of Criminal Procedure, 1973 (11 of 1974)—Sections 125(3), 421, 482—Code of Civil Procedure, 1908 (Act V of 1908)—Order 11, Rule 21—Ad-interim maintenance granted to wife—Non-payment by the husband—Procedure for recovery not followed—Striking down of defence—Criminal Court—Applying inherent powers of Civil Court—Legality of.*

*Held*, that in the instant case, the trial Court instead of following correct procedure for recovery of interim maintenance due to the wife by following procedure for levying or recovery of fine as provided under Section 125(3) and 421 of the Code or, by passing an order of sentence against the defaulting husband, has gravely erred in law in striking off the defence of the husband in the main petition.

(Para 6)

*Held*, that it is quite patent that the provisions under order 11, Rule 21 of the Code of Civil Procedure which allows defence of a party to be struck off, or, inherent power of a civil Court in this regard, would not be applicable to the cases for grant, or, recovery of maintenance under Section 125 of the Code. Legally speaking, it would not be permissible for a Criminal Court while acting under Section 125 of the Code to strike off the defence of a party for non-payment of interim maintenance.

(Para 7)

*Criminal Misc. under Section 482 Criminal Procedure Code praying that present petition be accepted and the impugned orders dated 21st May, 1988 (Annexure P-1), Annexure P-2 dated 17th August, 1989 passed by the Judicial Magistrate 1st Class Mansa and Annexure P-4, dated 22nd April, 1989 passed by the Additional Sessions Judge, Bathinda be quashed in the interest of justice. Any other relief to which petitioner is found entitled in the facts and circumstances of the case be also granted.*

R. L. Gupta, Advocate, for the Petitioner.

G. S. Doad, Advocate, for the Respondents.

Gurvinder Singh v. Murti and others (S. S. Grewal, J.)

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ORDER

S. S. Grewal, J.

(1) This petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) relates to quashment of impugned orders Annexure P-1 dated 21st May, 1988 granting ad interim maintenance and Annexure P-2 striking off the defence of the husband for non-payment of interim maintenance allowance, passed by Judicial Magistrate 1st Class, Mansa, as well as impugned order, Annexure P/4 dated 22nd April, 1989 passed by Additional Sessions Judge, Bathinda, whereby on revision the order concerning striking off the defence of the husband-petitioner was upheld.

(2) In brief, facts relevant for the disposal of this petition are that respondent-wife moved an application for grant of maintenance under Section 125 of the Code on her behalf and on behalf of her two minor children on 18th March, 1987 in the trial Court, which,—vide impugned orders Annexure P-1 granted interim maintenance to the wife and her two minor children with effect from the date of the application. As the husband could not pay the *ad interim* maintenance, his defence was ordered to be struck off,—vide impugned order Annexure P-2.

(3) The learned counsel for the parties were heard.

(4) Learned counsel for the petitioner conceded that in view of the authoritative pronouncement of the apex Court in *Savitri v. Govind Singh Rawat* (1), the trial Court had the jurisdiction to grant interim maintenance. It was, however, submitted that the learned trial Magistrate had erred in law in striking off the defence of the petitioner-husband on account of non-payment of interim maintenance to the wife and minor children without following the proper procedure at all, for recovery of maintenance amount by issuing a warrant for levying the amount due in the manner provided for levying fines, or, by passing order of sentence against the defaulter husband as specifically provided under sub section (3) of Section 125 of the Code.

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(1) I(1986) D.M.C. 1.

(5) Object of law is to grant interim maintenance to the wife to save her from vagrancy. In *Savitri's case* (Supra) it was observed as under :—

“Every court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. This principle is embodied in the maxim ‘*ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest*’ (where anything is conceded, there is conceded also anything without which the thing itself cannot exist). Whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorised in express terms be also done, then that something else will be supplied by necessary intendment.”

(6) The fact remains that in the instant case the trial Court instead of following correct procedure for recovery of interim maintenance due to the wife by following procedure for levying or recovery of fine as provided under Section 125(3) and 421 of the Code or, by passing an order of sentence against the defaulting husband, has gravely erred in law in striking off the defence of the husband in the main petition. This error on the part of the Courts below has not been helpful in recovering the interim maintenance by the wife so far. Instead the litigation between the parties has been unnecessarily prolonged.

(7) On behalf of the wife, reliance was placed on single Bench authority of this Court in *Mewa v. Man Singh* (2), wherein reliance was placed on earlier judgments of this Court in *Amarjit Kaur v. Sohan Singh* (3), and *Smt. Surinder Kaur alias Shindi v. Baldev Singh* (4). In all these authorities the defence of the husband was struck off for not complying with the order for payment of maintenance *pendente lite* and litigation expenses. To the similar effect are the authorities of this Court in *Kamla Devi v. Ratti Ram* (5), and *Gurbachan Kaur v. Gurdial Singh* (6), and that of Rajasthan High Court in *Sarbati v. Sahi Ram* (7). All the aforesaid authorities cited on behalf of the respondent-wife relate to the

(2) II (1983) D.M.C. 225.

(3) 1979 H.L.R. 536.

(4) 1980 H.L.R. 514.

(5) II (1986) D.M.C. 308.

(6) (1984) D.M.C. 207.

(7) I(1985) D.M.C. 144.

Chander Mani v. Haryana Urban Development Authority,  
Kurukshetra and another (S. S. Sodhi, J.)

striking off the defence of the husband for non-payment of maintenance under Section 24 of the Hindu Marriage Act. It is quite patent that the provisions under Order 11 Rule 21 of the Code of Civil Procedure which allows defence of a party to be struck off, or, inherent power of a civil Court in this regard, would not be applicable to the cases for grant, or, recovery of maintenance under Section 125 of the Code. Legally speaking, it would not be permissible for a Criminal Court while acting under Section 125 of the Code to strike off the defence of a party for non-payment of interim maintenance. None of the authorities cited on behalf of the respondent-wife relate to under Section 125 of the Code. Thus all the aforesaid authorities would not be applicable to the facts and circumstances of the present case and the same are clearly distinguishable.

(8) For the foregoing reasons, the impugned orders Annexures P-2 and P-4 passed by the Courts below for striking off defence of the husband on the ground of non-payment of interim maintenance are hereby set aside. The respondents, if so advised, may have recourse to proper procedure under Section 125(a) of the Code for realising the interim maintenance. This petition is accordingly allowed.

P.C.G.

Before S. S. Sodhi, M. R. Agnihotri, and J. B. Garg, JJ.

CHANDER MANI,—Petitioner.

versus

HARYANA URBAN DEVELOPMENT AUTHORITY, KURUKSHETRA AND ANOTHER,—Respondents.

Civil Writ Petition No. 13026 of 1989.

9th March, 1990.

*Constitution of India, 1950—Art. 226—Haryana Urban Development Authority Act, 1977—S. 17—Haryana Urban Development (Disposal of land and plots) Regulations, 1978—Rgl. 12—Cl. 9 of allotment letter—Compensation for land acquisition enhanced by Court—Payment of enhanced compensation—Petitioners liable to pay the same—Demand notice of HUDA calling upon allottees to pay enhanced price within 30 days of notice on pain of penalty and*