
cases clearly distinguishable on facts. In these cases, service was assumed to have been effected when it was reported that the respondent had 'refused' to receive the summons. The Court had then proceeded to pass *ex parte* orders. This was not accepted by the Courts. Such is not the position in the present case. These decisions are thus of no relevance and, therefore, require no elaborate consideration.

(14) It may also be noticed that under the provisions of Order 43 Rule 1(d) of the Code of Civil Procedure, an order rejecting an application under Order 9 Rule 13 is applicable. However, for the reasons best known to the petitioners, no appeal was filed. So far as this revision petition is concerned, the order of the Rent Controller does not suffer from any illegality or impropriety which may call for any inference. Accordingly, it is dismissed in limine.

J.S.T.

Before Hon'ble V. S. Aggarwal, J.

NACHHATTAR SINGH,—Petitioner.

versus

HARJINDER KAUR & ANOTHER,—Respondents.

Crl. R. No. 230 of 1993

17th February, 1995.

Code of Criminal Procedure, 1973—Section 125 (2)—Maintenance—Whether to be granted from date of order or from date of application—Judicial discretion to be exercised.

Held, that the jurisdiction is vested in the trial Court to award the maintenance from the date of the order or from the date of the application. It has to be exercised in a reasonable manner keeping in view the facts and circumstances of the case. It is judicial discretion which is to go not by humor, but in the light of the material before the Court. Special reasons need not be recorded but reasons for arriving at the conclusion have to be given.

(Para 10)

G. S. Punia, Advocate, for the *Petitioner*.

Inderjit Malhotra, Advocate, for the *Respondent*.

JUDGMENT

V. S. Aggarwal, J.

Sub-section (2) of Section 125 of the Code of Criminal Procedure, 1973 reads as under :—

“(2) Such allowance shall be payable from the date of the order, or, if so, ordered from the date of the application for maintenance.”

The above provision of the Code of Criminal Procedure 1973, in its stark brevity leaves it to the Court to decide as to whether the maintenance allowance is to be paid from the date of the order or from the date of application for maintenance. This is the short question in controversy in the present revision petition.

To appreciate the answer, facts of it are to be delineated. The application under Section 125 of the Code of Criminal Procedure was filed by Harjinder Kaur and Manpreet Kaur (respondents No. 1 and 2 in the present petition) against Nachhattar Singh (petitioner). The learned Sub-Divisional Judicial Magistrate, Khanna, allowed the application and directed the petitioner to pay Rs. 400 per month as maintenance to respondent No. 1 and Rs. 200 per month to respondent No. 2 from the date of the order namely 21st January, 1992. Respondents preferred a revision petition in the Court of Sessions Judge at Ludhiana. The learned Additional Sessions Judge, Ludhiana, modified the order of the trial Court and directed that the maintenance at the rate awarded by the trial Court, shall be payable from the date of application i.e. 16th December, 1987. Adjustment of the maintenance allowance already received was granted.

The petitioner challenges the order passed by the learned Additional Sessions Judge, Ludhiana with the sole claim that maintenance should have been allowed only from the date of the order passed by the trial Court.

This question has been drawn to the attention of this Court more often than not. Reference to some of the precedents in this regard would be advantageous. In the case of *Bhupinder Singh v. Inderjit Kaur* reported as (1), it was alleged that the

normal rule¹ was that the maintenance should be granted from the date of the order and not from the date of application. The said argument was repelled from the following specific observation :—

“A destitute wife or child needing succour is entitled to get it from the date she or it approaches the court unless there are circumstances which do not justify such a course. No such circumstance has been pointed out here. The wife has been found to be entitled to maintenance on the neglect or refusal of the husband. She complained of that fact when she made the application. Thus she is entitled to maintenance from the date of the application.”

This question as to whether it is obligatory for the court to give special reasons for granting the maintenance from the date of application was referred to the Division Bench and the Division Bench answered the question firstly by holding that it is not obligatory for the Court to give special reasons. In the case of *Gurpartap Singh v. Smt. Satwant Kaur* (2), the findings were recorded in paragraph 4 and the same are reproduced as under :—

“It only provides outer limits so as to conclude that the Magistrate cannot fix future date for example two months subsequent to the passing of the order for payment of maintenance allowance nor earlier to the date of application, i.e. with retrospective effect. It is, therefore, not obligatory for the Court to give special reasons for granting maintenance/interim maintenance under section 125 of the Code, from the date of the application which is purely within its discretion.”

Therefore the Court, however, felt that in any case in view of section 354 Cr.P.C. the Court is required to support its decision for determination with reasons. The relevant extract is reproduced as under :—

“However, we would like to mention here that by force of rule of jurisprudence every order had to be reasoned. Section 354 of the Code deals with contents of judgments and in clause (b) of sub-section (i) thereof it is clearly mentioned that a judgment shall contain the point or points for determination, the decision thereof and the

reasons for the decision. To that extent, the Court is required to support its decision on every point for determination with reasons and may give reasons in each of the two eventualities. Otherwise, no special reasons are called for, for granting maintenance/interim maintenance under Section 125 of the Code from the date of the application."

Similarly in the case of *Arun Kumar Sharma v. Smt. Rama Sharma and another* (3), this question arose for determination and it was held that the maintenance should have been granted in the facts of this case from the date of order and not from the date of application.

However, subsequently in the case of *Bhupinder Singh Walia v. Varinder Kaur* reported as (3A) the wife has been taken suitable time in producing her evidence and it was held that the delay in disposal of the case cannot be attributed to the husband alone and again the order was passed for maintenance from the date of order of the learned trial Magistrate.

It is to be remembered that the jurisdiction is vested in the trial Court to award the maintenance from the date of the order or from the date of the application. It has to be exercised in a reasonable manner keeping in view the facts and circumstances of the case. It is judicial discretion which is to go not by humor, but in the light of the material before the Court. Special reasons need not be recorded but reasons for arriving at the conclusion have to be given.

The petition was filed on 16th December, 1987 and decided by the learned Sub-Divisional Judicial Magistrate on 21st January, 1992. Interim maintenance has been awarded during the pendency of the petition. The learned Additional Sessions Judge rightly recorded that withholding of regular maintenance from the date of the application goes a long way in militating against the order of the interim maintenance. In fact the provision has been enacted to help the destitute wife or children. It is to prevent vagrancy by compelling a person to support his wife and child by providing cheap and speedy remedy. Withholding of the maintenance during the pendency of the petition under Section 125 Cr.P.C. in the facts

(3) 1991 (1) R.C.R. Page 151.

(3A) 1991 (2) Page 331.

Court on its own motion *v.* Shri N. S. Kanwar, Executive 35
Engineer, Provincial Division, P.W.D. (B&R), Naraingarh,
Distt. Yamunanagar (G. S. Singhvi, J.)

of the present case cannot hold the respondent liable deliberately. There would be gross injustice to the respondent. I find no reasons to set aside the reasonings of the learned Additional Sessions Judge, Ludhiana.

In the peculiar facts of the present case, there was full justification for modifying the order of the trial Court and allowing the maintenance from the date of the application.

Consequently the revision petition fails and is dismissed.

J.S.T.

Before Hon'ble G. S. Singhvi & N. K. Sodhi, JJ.

COURT ON ITS OWN MOTION.

versus

SHRI N. S. KANWAR, EXECUTIVE ENGINEER, PROVINCIAL
DIVISION, P.W.D. (B&R), NARAINGARH, DISTRICT
YAMUNANAGAR,—Respondent.

Civil Original Contempt Petition No. 721 of 1994

The 18th August, 1994.

Contempt of Courts Act, 1971—Section 2(b)—Wilful disobedience—Meaning thereof—Respondent fully aware of the Court order—Not taking any step to comply with those orders—Such respondent commits Contempt of Court.

Held, that the term 'wilful disobedience' used in Section 2(b) of the Contempt of Courts Act, 1971 cannot be construed to mean that an act must in all cases be designed and deliberate to be held as Civil Contempt. If a party who is fully in know of the order of the Court or is conscious and aware of the consequences and implications of the Court's order, ignores it or acts in violation of the Court's order, it must be held that disobedience is wilful. It is never practicable to prove the actual intention behind the act or omission. A Court can approach the question only objectively and it may presume the intention from the act done as every man is presumed to intend the probable consequence of his act.

(Para 24)

Further held, that the respondent did not take any step to carry out the Court's order for a period of over one year and six months