IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 309 of 2026
Reserved on: 07.10.2026
Date of Decision: 16.10.2026

Subhash Chand ...Petitioner

Versus

Sarla Devi ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] No.

For the Petitioner : M/s Parav Sharma & Vishali Lakhanpal, Advocate.

For Respondent : None.

Rakesh Kainthla, Judge

The present revision is directed against the order dated 31.03.2026 passed by the learned Additional Sessions Judge, Hamirpur, H.P. (learned Appellate Court) in Criminal Appeal No. 19 of 2023, titled Subhash Chand vs. Sarla Devi, vide which the order dated 24.11.2021 passed by the learned Additional Chief Judicial Magistrate, Court No.1, Hamirpur, District Hamirpur, H.P. (learned Trial Court) was upheld. *(The parties shall hereinafter be referred to*

1 Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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in the same manner as they were arrayed before the learned Trial Court for convenience.)

2. Briefly stated, the facts giving rise to the present petition are that the applicant had filed an application under Section 12 of the Protection of Women from Domestic Violence Act (DV Act), which was allowed, and maintenance of ₹ 1250/- per month was granted by the Court to the applicant. Learned Sessions Judge, Hamirpur, enhanced the maintenance amount to ₹2500/- per month from the date of the judgment. Learned Sessions Judge also directed the respondent to provide accommodation, or to pay ₹1500/- per month in lieu of accommodation. The respondent failed to pay the maintenance allowance and rent w.e.f. 04.07.2016 till 03.07.2017 despite repeated requests. Hence, the application was filed for the recovery of the amount.

3. Learned Trial Court held that the respondent had failed to pay the maintenance. He made a vague claim that he had paid ₹80,000/- to the applicant and failed to prove any payment. Therefore, he was liable to pay the arrears of maintenance and rent of ₹48,000/-. A warrant of attachment of the property was ordered to be issued.

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4. Being aggrieved by the order passed by the learned Trial Court, the applicant filed an appeal, which was decided by the learned Additional Sessions Judge, Hamirpur.

5. The learned Appellate Court concurred with the findings recorded by the learned Trial Court that there was no proof of the payment, and the respondent was liable to pay the amount awarded by the Court. The respondent also took a plea that the applicant was declared to be not the wife of the respondent by the learned Principal Judge (Family Court), Hamirpur, in Civil Suit No. 38 of 2016, decided on 24.12.2021, and he was not liable to pay any amount. The learned Appellate Court held that the remedy of the respondent was to file an application under Section 25 of the DV Act for alteration of the amount. Hence, the appeal was dismissed.

6. Being aggrieved by the order passed by the learned Courts below, the respondent/petitioner herein has filed the present petition asserting that the learned Principal Judge, Family Court, has held that the applicant is not the wife of the respondent. He had restrained the applicant from claiming any benefit of the alleged non-existent marriage with the respondent. The learned Appellate Court failed to take notice of the judgment and decree passed by the competent Court. It was wrongly held that the

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respondent is required to file an application for modification of the order. Therefore, it was prayed that the present petition be allowed and the order passed by the learned Courts below be set aside.

7. Mr Parav Sharma, learned counsel for the respondent/petitioner herein, submitted that the learned Appellate Court erred in dismissing the appeal filed by the respondent. The applicant has been declared not to be the wife of the respondent. She has been restrained from claiming any benefit of the alleged non-existent marriage. Therefore, she could not have filed the application for maintenance and the rent. The criminal court was bound by the decree of the civil court and should have refused to enforce an order passed by the criminal court awarding the maintenance and the rent to the applicant. Therefore, he prayed that the present petition be allowed and the order passed by the learned Appellate Court be set aside.

8. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

9. Section 25 (1) of the DV Act provides that a protection order made under Section 18 shall remain in force till the aggrieved person applies for discharge. Section 25 (2) provides that if the Magistrate is satisfied that there is a change in the circumstances

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requiring alteration, modification or revocation of any order made under this Act, he may, for the reasons to be recorded in writing, pass such an order as he thinks may be appropriate. Therefore, the order passed by the learned Magistrate will remain in force until it is set aside, modified, discharged or revoked by the Court. It was laid down by the Punjab and Haryana High Court in ***Shiela Rani v. Durga Parshad, 1964 SCC OnLine Punj 144: ILR (1964) 2 P&H 477*** that the executing Court cannot refuse to execute the order of maintenance after passing of the decree by the Civil Court, and the order has to be varied or set aside. It was observed at page 481:

> "Though it appears at first sight mandatory for the Magistrate to cancel an order under section 488 where a competent Civil Court has pronounced an order which runs counter to the order for maintenance, Guha J. was of the opinion that it was still discretionary with the Magistrate to cancel or vary the order of maintenance. Be that as it may, the respondent-husband did not apply to the criminal Court under sub-section (2) of section 489 of the Code of Criminal Procedure and the executing Court had no warrant, in my opinion, to declare that the maintenance had become attachable on passing of the decree for restitution of conjugal rights."

10. Thus, the Learned Appellate Court had rightly held that the remedy of the respondent was to approach the learned Magistrate, who had passed the order, to seek the revocation of the order and not to file the objection in the execution petition.

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11. It was submitted that the applicant was restrained from enforcing any benefit out of the alleged non-existent marriage, and she could not have maintained the application for execution. This submission will not help the respondent because the remedy for the respondent lies in filing an execution of the judgment passed by the learned Principal Judge, Family Court, and not in objecting to the execution pending before the competent Court.

12. The respondent/petitioner has not established that he had paid the maintenance to the applicant. Therefore, the learned Courts below had rightly held that the respondent was liable to pay the maintenance awarded by the Court.

13. In view of the above, there is no infirmity in the judgment and order passed by the learned Courts below requiring any interference from the Court. Hence, the present petition fails and is dismissed.

14. A copy of this judgment, along with the record of the learned Courts below, be sent back forthwith. Pending applications, if any, also stand disposed of.

(Rakesh Kainthla)
Judge

16th October, 2026
(ravinder)

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