

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 163 of 2002

NANDU

.....

APPELLANT

VERSUS

RAKESH

.....

RESPONDENT

O R D E R

1. This appeal is directed against the judgment of the High Court dated 5th July, 2001, whereby the appeal filed by the respondent herein has been partly allowed and the direction that the sum of ` 500/- per month to be paid as maintenance under Section 125 Cr.P.C. to the appellant and to the child from the marriage has been modified to the extent that the maintenance would be payable only to the child. When this matter came up before this Court on the 28th January, 2002, the following order was passed:

"No one appears on behalf of the respondent despite the fact that service is complete.
Leave granted.
Maintenance be made available to the petitioner in terms of the order of the Family Court."

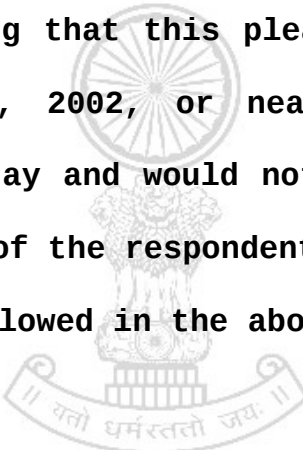
2. Today Mrs. Qamaruddin, the learned counsel for the

appellant has informed us that despite the order of the High Court being stayed, the respondent had not paid a penny towards the maintenance to the appellant-wife or to the child. The learned counsel for the respondent Mr. Dushyant Parashar has, however, pointed out (and has produced certain documents as well before us in Court) that the respondent was a schizophrenic and was, therefore, not capable of understanding the consequences of the legal issues that had been raised and was not in a capacity to understand and implement the directions of the Court. The fact that the respondent is a schizophrenic has been disputed by the learned counsel for the appellant.

3. There are a certain facts which need to be highlighted herein. The Family Court rendered its judgment on the 4th October, 2000 allowing maintenance of 500/- per month to the appellant and to the child. The High Court modified the order of the Family Court vide the impugned order dated 5th July, 2001. The order of the High Court was stayed by this Court on the 28th January, 2002. It is also the case of the respondent that as he was mentally challenged he was unable to comply with the directions of the Court. We, however, find some doubt about this assertion in the light of the statement made by the learned counsel for the

respondent that the respondent had contracted a second marriage some time in the year 2004 or 2005. We, therefore, feel that it would be appropriate in the circumstances that the respondent has not paid a penny so far towards the maintenance either to the wife or to his child despite the stay order granted by this Court that the appeal needs to be allowed and the matter remitted to the Executing Court for appropriate proceedings. The Executing Court will, however, permit the respondent to raise the plea of insanity but will give a positive finding that this plea was relatable to the date 28th January, 2002, or nearabouts when this Court had granted a stay and would not relate it to the current mental status of the respondent.

4. The appeal is allowed in the above terms.


 JUDGMENTJ
 [HARJIT SINGH BEDI]

.....J
 [CHANDRAMAULI KR. PRASAD]

NEW DELHI
MARCH 15, 2011.