

**IN THE COURT OF SH. MUNEESH GARG, ADDITIONAL
SESSIONS JUDGE-03, NORTH WEST DISTRICT,
ROHINI COURTS, DELHI**

Presented on : 06.02.2026

Registered on: 09.02.2026

Decided on : 16.02.2026

**Criminal Revision 41/2026
JAI KISHOR Vs. SANTOSH
PS Sultanpuri**

IN THE MATTER OF:

JAI KISHOR,

S/o Late Sh. Brij Bhushan,

R/o H. No. F-878-879, Mangolpuri, Delhi.

.... Revisionist

Versus

1. SMT. SANTOSH,

W/o Sh. Jai Kishore,

D/o Sh. Raja Ram.

2. MASTER DIVYANSH,

S/o Sh. Jai Kisore and Smt. Santosh,

Through Natural Mother Smt. Santosh Respondent No.1,

R/o H. No. D-2/183, Sultanpuri,

Delhi-110086.

....Respondent

ORDER

1. This is a criminal revision petition filed under section 397/399 Code of Criminal Procedure r/w Section 438/440 BNSS, 2023 on behalf of Petitioner/Judgment Debtor to set aside the order dated 05.02.2025

(hereinafter referred as ‘impugned order’) passed by the Ld. JMFC/Mahila Court-2, North-West District, Rohini Courts, New Delhi (hereinafter referred as Ld. Trial Court) in the matter titled as “Smt. Santosh vs. Jai Kishan”, Execution No. 364/2025, PS Sultanpuri, whereby the Ld. Trial Court took the Petitioner/JD into custody on first appearance without affording any opportunity to file objections.

2. It is stated that the Ld. Trial Court has sent the Petitioner/JD to undergo civil imprisonment for 30 days vide impugned order dated 05.02.2026. It is further stated that the impugned order has been passed in Execution Petition No. 364/2025 arising out of an order of interim maintenance. An order of interim maintenance was passed in favour of the respondent, pursuant to which the aforesaid execution petition was filed. It is further stated the Petitioner has already paid a sum of Rupees 1,86,000/- out of the total decretal amount of Rupees 6,40,000/-, which clearly reflects his bona fide intention to comply with the order. It is further stated that on the first date of appearance in the execution proceedings, the Petitioner filed *vakalatnama* and sought time to file objections. However, the Ld. Trial Court, without granting reasonable opportunity, proceeded to pass the impugned order of civil imprisonment. The Petitioner was not afforded adequate opportunity to place relevant facts and documents on record. It is stated that the Petitioner/JD has been regularly paying the maintenance to the DH/Respondent from his bank account and also from deceased father's account of revisionist and court. It is stated that the Ld. Trial Court

failed to consider that the due date for making monthly payment is 10th of each month and thereby surpassed its jurisdiction while ordering the JD/Revisionist to imprisonment. It is stated that impugned order is illegal, arbitrary and contrary to settled principles of law.

3. The Petitioner has challenged the impugned order on the following grounds:

(a) that the Ld. Trial Court has failed to grant reasonable time to the Revisionist to file his reply/objections, thereby Ld. Trial Court has violated the principles of natural justice.

(b) that the impugned order was passed on the first date of appearance of the Revisionist, without giving him effective opportunity of hearing.

(c) that the Ld. Trial Court has failed to consider the part payment already made by the Revisionist and his willingness to pay the remaining amount.

(d) that the Ld. Trial Court did not record any finding regarding willful and deliberate default on the part of the Revisionist.

(e) that the present execution petition pertains only to the order of interim maintenance passed by the Hon'ble Mahila Court. However, the Ld. Trial Court exceeded its jurisdiction by passing an order which effectively travels beyond the scope of the executable order and encroaches upon the jurisdiction of the Family Court.

(f) that the order of civil imprisonment is harsh, excessive, and disproportionate in the facts and circumstances of the case. It is stated that

the civil imprisonment is a measure of last resort and cannot be imposed mechanically.

(g) that the Ld. Trial Court ignored the fact that the due date for making monthly maintenance payment is the 10th day of each month, and the impugned order has been passed prior to expiry of the stipulated period, thereby exceeding its jurisdiction in directing civil imprisonment.

(h) that the impugned order is contrary to and in violation of the law laid down by the Hon'ble Supreme Court in ***Rajnish v. Neha, Criminal Appeal No. 730 of 2020 (arising out of SLP (Crl.) No. 9503 of 2018)***, decided on 04.11.2020, wherein guidelines regarding enforcement and recovery of maintenance have been authoritatively laid down.

4. The arguments of Ld. Counsel for the revisionist and Ld. Counsel for the respondent have been heard as well as the case record, including the records of the Ld. Trial Court have been thoroughly perused.

5. A brief background of the matter at hand is that Respondent/Decree holder filed the execution petition before the Ld. Trial Court to claim maintenance amount of Rs. 4,60,000/- from the date of filing i.e. 20.04.2019 to 20.11.2025 i.e. total period of 80 months @ Rs. 8,000/- vide order dated 25.04.2024. The Respondent/DH has prayed for execution by way of attachment of properties of Petitioner/judgment debtor. The Ld. Trial issued notice to the Revisionist vide order dated 21.11.2025. On 05.02.2026, Revisionist appeared before the Ld. Trial Court and he was

taken into custody vide impugned order dated 05.02.2026. The impugned order is reproduced here-in-under:

“ Date: 05.02.2026

Present: Sh. Sandeep Jindal, Ld. Counsel for DH.
Sh. Ajeet Siwatch, Ld. Counsel for JD with JD.

Fresh vakalatnama filed on behalf of JD. Taken on record.
Copy of execution petition alongwith documents have been supplied to JD in court today.

Ld. Counsel for DH submits that DH has received Rs.1,86,000/- out of decretal amount of Rs.6,40,000/-.

Ld. Counsel for JD submits that he is not sure about the outstanding of JD and he will file written objection on NDOH. To be taken at the end of board.

(Neha Goel)
JMFC/ Mahila Court 2
North West District / Rohini, Delhi
05.02.2026

At 01:24 pm,

Present: DH in person.
Sh. Ajeet Siwatch, Ld. Counsel for JD with JD.

Taking into account the conduct of the JD, JD is sentenced to undergo to civil imprisonment for 30 days from today. DH shall pay Rs.1,800/- as the subsistence allowance calculated @ of Rs.60/- per day to the Jail Superintendent concerned. Jail Superintendent concerned is directed to lodge the JD in a civil

prison and in case of non-availability of the same to make necessary arrangements for the same.

JD be produced on

Copy of this order be sent to the Jail Superintendent concerned.

List for 03.03.2026.

Copy dasti.

(Neha Goel)

JMFC/ Mahila Court 2

North West District / Rohini, Delhi

05.02.2026”

6. At the outset, it is relevant to analyse the law with respect to enforcement of orders of maintenance passed in Domestic Violence Act. In the case of ***Rajnesh*** (Supra), the Hon’ble Apex Court has expounded that an application for an order of Execution may be filed under the following provisions, as may be applicable:

(a) Section 28-A of HMA, 1955 read with Section 18 of Family Courts Act, 1984 and Order 21 Rule 94 CPC for executing an Order under Section 24 HMA (before the Family Court);

(b) Section 20 (6) of the DV Act, before the Judicial Magistrate;

(c) Section 128 CrPC before the Magistrate's Court.

7. The Hon’ble Supreme Court in the case of ***Rajnesh*** (Supra), categorically held that "For enforcement/execution of orders of

maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28-A of the Hindu Marriage Act, 1955; Section 20(6) of the DV Act; and Section 128 of CrPC, as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly Sections 51, 55, 58, 60 read with Order 21.”

8. Therefore, it is evident a Decree and Order for recovery of the arrears of maintenance passed under the DV Act shall have the same force and effect as a decree of a Civil Court and has to be recovered as per the procedure detailed in Order 21 Rule 94 CPC, 1908. Thus, an Order passed under Section 23 of DV Act, can be enforced under Section 20 (6) of DV Act, 1955 read with CPC. Now it is relevant to discuss the procedure as prescribed under CPC for Civil Imprisonment in default of payment in execution of a Money Decree.

9. Section 51 of the CPC defines the scope and powers of the Court to enforce execution which reads as under: -

Section 51: Powers of Court to enforce execution.-- Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree

(a) by delivery of any property specifically decreed;

(b) by attachment and sale or by the sale without attachment of any property;

(c) by arrest and detention in prison [for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section];

(d) by appointing a receiver; or

(e) in such other manner as the nature of the relief granted may require:

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied--

(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,--

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

(b) that the judgment-debtor has, or has had since the date of the decree the means to pay the amount of the decree or some

substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

10. Rules 37 and 40 of Order XXI CPC further prescribe the procedure for detention of a judgment debtor in prison as under:-

Order XXI: Execution of Decrees and Orders Payment under Decree-

Rule 37. Discretionary power to permit judgment-debtor to show cause against detention in prison.

(1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court [shall], instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison :

[Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.]

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor."

Rule 40. Proceedings on appearance of judgment-debtor in obedience to notice or after arrest.--

(1) When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison.

(2) Pending the conclusion of the inquiry under sub-rule (1) the Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.

(3) Upon the conclusion of the inquiry under sub-rule (1) the Court may, subject to the provisions of section 51 and to the other provisions of this Code, make an order for the detention of the judgment debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making the order of detention, leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction

of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

(4) A judgment-debtor released under this rule may be re-arrested.

(5) When the Court does not make an order of detention under sub-rule (3) it shall disallow the application and, if the judgment-debtor is under arrest, direct his release.]

11. As per the provisions of Section 51 of CPC, it is incumbent on the Executing Court not to proceed in execution of a decree for the payment of money by detention in prison till such time as the JD has been given an opportunity of showing cause as to why he should not be committed to prison. As per provisions of Order XXI Rule 37 of CPC, the executing Court is required to call upon the JD before passing an order of civil detention.

12. The law has prescribed detailed procedure in the aforesaid rules in order to protect the personal liberty of an individual. The personal liberty of a person cannot be curtailed without following the due procedure as prescribed under the aforesaid rules. It is the duty of Court to satisfy before passing the order of arrest in execution of money decree that the judgement debtor is deliberately neglecting to pay the decretal amount.

13. The Hon'ble Supreme Court observed in the reported case in *Jolly George Varghese vs. Bank of Cochin, AIR 1980 SCC 470*, that the

Executing Court passed order 21 Rule 37 of CPC arrest of the judgment debtor and detention in civil prison, it is violative of Article 11 of International Covenant on Civil and Political Rights and Article 21 of Constitution of India. Before passing orders under Order 21 Rule 37 and 38, the Executing Court should record satisfaction regarding means of judgment-debtor and then pass orders giving adequate reasons.

14. In the instant matter, the mandatory provisions of law as laid down in Section 51 of CPC and Order XXI Rule 37 of CPC have not been followed. The Respondent has not filed any application for the execution of a decree for the payment of money by the arrest and detention in the civil prison of judgment-debtor. Further, the impugned Order does not reflect that any show cause notice was given to the appellant/JD to explain as to why he should not be sent to civil imprisonment. Moreover, there is no satisfaction recorded in writing that the appellant since the date of Order, has means to pay the money, but he is intentionally neglecting or refusing to pay. Unless there is a finding to the effect that the non-payment of maintenance is on account of wilful conduct of the appellant, intending to defeat the bona fide claim of the respondent, the order of sending him to civil imprisonment, is neither justified nor warranted. The Ld. Trial Court has failed to follow the procedure as prescribed under CPC before directing the detention of the appellant in civil imprisonment. Therefore, the impugned order passed by Ld. Trial Court is not justified. Accordingly, the impugned order dated 05.02.2026 is hereby set aside. **Ld. Trial Court is directed to send**

the release order today itself. The present revision petition is allowed in aforesaid terms. The copy of the order alongwith TCR be sent to Ld. Trial Court forthwith for necessary information and compliance.

15. It is further clarified that observations made hereinabove shall have no bearing on the merits of the case in any manner.

16. The revision petition is disposed of accordingly.

17. File be consigned to Record Room.

**(MUNEESH GARG)
ADDL.SESIONS JUDGE - 03
NORTH WEST, ROHINI COURTS,
DELHI/16.02.2026**

Dictated on : 16.02.2026
Transcribed on : 16.02.2026
Checked on : 16.02.2026
Signed on : 16.02.2026

**(MUNEESH GARG)
ADDL.SESIONS JUDGE - 03
NORTH WEST, ROHINI COURTS,
DELHI/16.02.2026**