

AFR

Neutral Citation No. - 2023:AHC:225171

Court No. - 88**Case :-** APPLICATION U/S 482 No. - 23246 of 2023**Applicant :-** Sahabi Khatoon**Opposite Party :-** State of U.P. and Another**Counsel for Applicant :-** Satya Priya Upadhyay**Counsel for Opposite Party :-** G.A.,Om Prakash Yadav**Hon'ble Sanjay Kumar Singh,J.**

1-Heard Mr. Satya Priya Upadhyay, learned counsel for the applicant, Mr. Rabindra Kumar Singh, learned Additional Government Advocate assisted by Mr. Prashant Kumar Singh, learned Brief Holder for the State of U.P./opposite party no. 1 and Mr. Om Prakash Yadav, learned counsel appearing on behalf of opposite party no. 2.

Relief

2-The instant application under Section 482 Cr.P.C. has been preferred by the applicant-Sahabi Khatoon with a prayer to quash the order dated 05.06.2023 passed by Additional Principal Judge, Family Court, Ballia in Criminal Misc. Case No. 321 of 2022 (*Jamal Khan vs. Sahavi Khatoon*), whereby an application under Section 126(2) Cr.P.C. of the opposite party no.2 has been allowed.

Issue

3-The principle question of law that falls for consideration of this Court in the present litigation is whether the Family Court was justified in allowing the recall application U/s 126(2) of the Criminal Procedure Code, 1973 (for short 'the Cr.P.C.') of the opposite party no. 2 (husband).

Crux of the matter

4-This case is an illustration of how a matter can be delayed for years and also an example of abuse of the process of the Court. The proceeding under Section 125 Cr.P.C. is pending for the last 21 years and no amount of maintenance has been paid to the wife by the husband who is a salaried person and presently he is getting a salary of Rs. 96,616/- per month.

Factual Matrix

5- Brief facts of the case which are required to be stated are as under :-

5.1-The applicant-Sahabi Khatoon is wife of opposite party no. 2 namely Jamal Khan. The marriage of the applicant with the opposite party no. 2 was solemnized on 12.06.1986 and from their wedlock, three sons were born but on account of acrimonious relation between them, their marriage was not successful and as a result thereof, the opposite party no.2 divorced her after 13 years of marriage but he kept his three sons with him. Thereafter she has been thrown out of her matrimonial home on 20.07.1999 by the opposite party no.2. As such, the applicant has been living in her parental home since July, 1999.

5.2-On 20.12.2002, applicant moved an application under Section 125 Cr.P.C. claiming maintenance of Rs. 2,000/- per month from the opposite party no. 2 who at that time was getting salary of Rs. 15,000/-, in which opposite party no. 2 has filed an objection after one year and three months on 29.03.2004.

5.3-The opposite party no. 2 after filing his objection became absent, therefore, the Family Court passed an order dated 26.06.2005 to proceed ex-parte in the matter but the said order was recalled after about three months vide order dated 12.09.2005, subject to payment of cost of Rs. 300/-.

5.4-Thereafter, opposite party no. 2 again became absent, therefore, Family Court, second time passed an order dated 09.10.2006 to proceed ex-parte in the matter but again, opposite party no. 2 moved an application for recall of the order dated 09.10.2006, which was allowed after two years and seven months vide order dated 26.05.2009, subject to payment of cost of Rs. 500/-.

5.5-In the mean time, the evidence of the applicant was recorded on 15.12.2006 and date was fixed for her cross-examination by the opposite party no. 2 but he, with a view to linger on the proceedings, did not cross-examine her. After fixing several dates, last opportunity to the opposite party no. 2 for cross-examination was given on 13.12.2011 but again he did not comply the said order and on account of his non co-operation, proceeding was lingered on.

5.6-The Family Court for the third time, passed an order on 01.11.2012 to proceed ex-parte in the matter but again, on the recall application filed by the opposite party no. 2, the order dated 01.11.2012 has been recalled.

5.7-At this stage, after about twelve years of the pendency of the proceeding under Section 125 of Cr.PC., applicant moved an application dated 10.11.2014 seeking interim maintenance of Rs. 10,000/- per month from the opposite party no. 2 mentioning therein that the opposite party no. 2 is posted on the post of Surveyor in coal field (colliery), District Burdwan and getting salary of Rs. 60,000/- per month. In the interim maintenance application, it is also mentioned by the applicant that she is aged about 45 years and has no means of her livelihood. The said application dated 10.11.2014 of the applicant has been allowed vide order dated 05.05.2015 directing the opposite party no. 2 to pay Rs. 2,000/- per month towards an interim maintenance to the applicant.

5.8-Later on, applicant became ill, therefore, she could not

pursue her case. As a result thereof, her main application under Section 125 Cr.P.C. was rejected on 25.11.2017 for want of prosecution. Thereafter, applicant moved a recall application dated 21.04.2018 under Section 126 Cr.P.C. for recall of the order dated 25.11.2017, which has been allowed vide order dated 10.12.2018 and the order dated 25.11.2017 has been recalled restoring the case on its original number.

5.9-Thereafter fresh notice was issued to the opposite party no.2 and publication was also done in the news paper on 19.12.2019. On 13.01.2020, service of notice on the opposite party no.2 was treated sufficient and further on 12.02.2020 order was passed to proceed ex-parte in the matter. Thereafter application under Section 125 Cr.P.C. of the applicant was allowed vide order dated 18.12.2021 directing the opposite party no. 2 to pay a sum of Rs. 5,000/- per month to the applicant from the date of presentation of the application under Section 125 Cr.P.C. but no amount of maintenance has been paid by the opposite party no. 2, therefore, applicant having no option left moved an application under Section 125(3) Cr.P.C. for recovery of a sum of Rs. 12,00,000/- from the opposite party no. 2, on which recovery warrant for recovery of Rs. 12,00,000/- has been issued against the opposite party no. 2 on 25.01 2023.

5.10-As soon as the opposite party no. 2 came to know about the above application under Section 125 (3) of the applicant, he moved an application under Section 126(2) Cr.P.C. dated 20.04.2022 for recall of ex-parte order dated 18.12.2021 mainly on the ground that there was a compromise between the applicant and opposite party no. 2 and it was agreed between them that they will not appear in the proceeding under Section 125 Cr.P.C.. It is also alleged by the opposite party no. 2 that he was not aware about the proceedings under Section 125 Cr.P.C. initiated by the applicant as no notice or summon was received to him.

5.11-Against the said application dated 20.04.2022, applicant has filed an objection dated 26.08.2022 denying the grounds taken by the opposite party no. 2 in his recall application dated 20.04.2022.

5.12-The Family Court vide order dated 05.06.2023 has allowed the recall application dated 20.04.2022 of the opposite party no. 2 by observing that misuse of judicial process done by the opposite party no. 2 can be compensated by imposing harsh penalties. Accordingly, the order dated 18.12.2021 has been recalled subject to payment of cost of Rs. 80,000/- by the opposite party no. 2 till 04.08.2023 with the observation that in case, the said order is not complied with by the opposite party no. 2, the order dated 05.06.2023 shall automatically become ineffective.

5.13-The opposite party no. 2 did not pay Rs. 80,000/- in compliance of order dated 05.06.2023 within time by 04.08.2023 and on the last day, he moved an application dated 04.08.2023 seeking further time, which has been allowed on the same day by the Family Court without giving opportunity of hearing to the applicant and to file objection on the said application granting one month further time to him to comply the order dated 05.06.2023 by 04.09.2023.

5.14-Thereafter, opposite party no. 2 deposited a sum of Rs. 80,000/- on 04.09.2023.

5.15-The above order dated 05.06.2023 is the subject matter of challenge in the present application by the applicant-wife.

Submissions on behalf of applicant (wife)

6-The main substratum of argument of learned counsel for the applicant is that after recall of final order dated 18.12.2021, the above proceeding under Section 125 Cr.P.C. again got pending since 2002 but till date, no maintenance has been paid by the opposite party no. 2. The application of the applicant for

granting interim maintenance had been allowed vide order dated 05.05.2015 but said order has neither been complied with nor has been challenged by the opposite party no. 2. Much emphasis has been given by contending that though the Family Court, in the impugned order dated 05.06.2023 has recorded the finding that the opposite party no. 2 was very much aware about the proceeding under Section 125 Cr.P.C., even then the recall application under Section 126(2) Cr.P.C. of the opposite party no. 2 has been illegally allowed without any cogent reason, therefore, the same is liable to be quashed. It is also submitted that since in the order dated 05.06.2023, it was observed that in case, said order is not complied with by the opposite party no.2, the same shall automatically stands ineffective, then on non compliance of the condition mentioned in the order dated 05.06.2023 by the opposite party no.2, Family Court was not empowered to modify the order dated 05.06.2023 vide order dated 04.08.2023 granting one month further time to the opposite party no. 2 to deposit Rs. 80,000/- without giving opportunity of hearing to the applicant, as such, the order dated 04.08.2023 is also illegal in view of Section 362 Cr.P.C.

Submissions on behalf of opposite party no. 2 (husband)

7-On the other hand, learned counsel appearing on behalf of opposite party no. 2 submits that after granting further time by the Family Court on 04.08.2023, opposite party no. 2 has deposited a sum of Rs. 80,000/- on 04.09.2023 and proceeding under Section 125 Cr.P.C. is going on but he could not dispute any factual argument advanced on behalf of the applicant, as noted above. The opposite party no.2 in his counter affidavit dated 02.11.2023 also did not say any thing about payment of maintenance to applicant. On putting query and giving offer to the opposite party no.2 for payment of arrears of amount of interim maintenance, learned counsel for the opposite party no.

2, upon instruction, submits that opposite party no.2 is not inclined to pay any amount of interim maintenance to the applicant pursuant to order dated 05.05.2015 and he flatly refused to pay single penny to the applicant.

Discussion

8-Having heard the submissions of learned counsel for the parties and perusing the record, I find that the application under Section 125 Cr.P.C. was filed by the applicant (wife) 20.12.2002, in which the opposite party no. 2 (husband) had filed an objection on 20.03.2004. The statement of the applicant was recorded way back in the year 2006, but on account of delaying tactic adopted by the opposite party no.2 as noted above in preceding paragraph no. 5, the proceeding is still pending for the last twenty one years. On non co-operation of opposite party no. 2, thrice Family Court passed the order to proceed ex-parte in the matter on 23.06.2005, 26.05.2009 and 01.11.2012 but on the recall applications filed by the opposite party no. 2, said orders have been recalled thrice. The applicant is posted on the post of Surveyor in coal field (colliery), District Burdwan and he is presently getting salary of Rs. 96,616/- per month but since 2002 till date, not a single penny has been paid by him to the applicant towards her maintenance. The order dated 05.05.2015, whereby opposite party no.2 was directed to pay an interim maintenance of Rs. 5000/-, has also not been complied with. On the application under Section 125(3) Cr.P.C. of the applicant, recovery warrant for recovery of Rs. 12,00,000/- from the opposite party no. 2 has been issued on 25.01.2023 but the said order has also not been complied with nor challenged by the opposite party no. 2. The application under Section 126(2) Cr.P.C. has been moved by the opposite party no.2 after statutory limitation period of three months without delay condonation application.

9-Here it would be relevant to quote Section 126 Cr.P.C., which

reads as under:-

Section 126 Cr.P.C.

(1) Proceedings under section 125 may be taken against any person in any district-

(a) where he is, or

(b) where he or his wife, resides, or

(c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.

(2) All evidence in such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proceed to be made, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases:

Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.

(3) The Court in dealing with applications under section 125 shall have power to make such order as to costs as may be just.

10-On perusal of impugned order dated 05.06.2023, I find that the Family Court has recorded several findings against the opposite party no. 2 about his act and conduct as well as *modus-operandi* adopted by him for delaying the proceeding under Section 125 Cr.P.C. for the last 21 years. It is also mentioned by the Family Court that court is not agree with the plea of the opposite party no. 2 and he has misused the judicial process, even then recall application under Section 126(2) Cr.P.C. of the opposite party no.2 has been allowed without recording cogent reasons, whereas proviso to Section 126(2) Cr.P.C. clearly states that ex-parte order may be set-aside upon 'good cause' only.

11-As per Black's law dictionary, the term 'good cause'

generally means a substantial reason amounting in law to legal excuse for failing to perform an act required by law. Phrase 'good cause' depends upon circumstances of individual case and finding of its existence lies largely in discretion of officer or court to which decision is committed.

12-In the present case, no strong reason sufficient in law to presume good cause has been shown by the Family Court while allowing the recall application of opposite party no. 2 vide impugned order dated 05.06.2023, hence, the same is not sustainable in the eyes of law.

13-The purpose and object of Section 125 Cr.P.C. is to provide immediate relief to an applicant. The remedy provided by Section 125 Cr.P.C. is summary in nature. The Amendment Act, 2001 also introduced an express provision for grant of 'interim maintenance' under Section 125 Cr.P.C and power has been vested to the concerned Court to order for making a monthly allowance towards interim maintenance during pendency of the petition. The third proviso to Section 125 Cr.P.C. (inserted vide Act 50 of 2001 w.e.f. 24.09.2001) provide that the proceeding for interim maintenance, shall as far as possible, be disposed of within 60 days from the date of service of notice on the contesting spouse.

14-The Apex Court in the case of **Chaturbhuji vs. Sita Bai, (2008) 2 SCC 316** has held as under:-

*"Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by the Apex Court in **Captain Ramesh Chander Kaushal Vs. Veena Kaushal** falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves."*

15-In the light of object of Section 125 Cr.P.C., the Family Court cannot delay grant of maintenance to wife and there is no escape for a able bodied husband from the responsibility of giving sustenance money to his wife despite soured relations. The delay in adjudication by the family Court is not only against human right but also against basic embodiment of dignity of an individual. The husband cannot take subterfuges to deprive her of the benefit of living with dignity.

16-The husband cannot be permitted to exploit the slow justice delivery system to deny what was legitimately due to the wife for her. It is well settled that the dilatory tactics by any of the parties in a proceeding under Section 125 Cr.P.C. has to be sternly dealt with, for which family Court has to be alive to the fact that the litigation before him pertains to emotional fragmentation and delay can feed it to grow.

17-It is the responsibility of the Court to ensure that the wheels of justice turn swiftly, especially when it comes to matters as vital as spousal maintenance. Delay in providing maintenance not only exacerbates the financial hardship faced by wife but also perpetuates a sense of insecurity and inequality. Legal process should not become impediments to timely justice.

18-It is also well settled that the finality of the judgment is absolutely imperative and great sanctity is attached to the final judgment. Permitting the parties to reopen the concluded judgments without any reasonable justification is clearly an abuse of the process of law and would have far-reaching adverse impact on the administration of justice. In the present case, the opposite party no. 2 has four times filed recall application as noted above which amounts to obstructing the administration of justice and interference with the due course of judicial proceedings.

19-The Apex Court in **Delhi Admn. v. Gurdip Singh Uban,**

(2000) 7 SCC 296 deprecated the practice of filing of applications for “clarification”, “modification” or “recall” of final judgments or orders. It was held in the said judgment that a party cannot be permitted to circumvent or bypass the circulation procedure provided in the provision pertaining to review and indirectly obtain a hearing in the open Court by filing an application for modification or recall. Such an application deserves to be dismissed with costs.

20-The Apex Court in the case of **Dnyandeo Sabaji Naik v. Pradnya Prakash Khadekar, (2017) 5 SCC 496** has held as under:-

"13. This Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practised in our country, there is no premium on the truth.

14. Courts across the legal system—this Court not being an exception—are choked with litigation. Frivolous and groundless filings constitute a serious menace to the administration of justice. They consume time and clog the infrastructure. Productive resources which should be deployed in the handling of genuine causes are dissipated in attending to cases filed only to benefit from delay, by prolonging dead issues and pursuing worthless causes. No litigant can have a vested interest in delay. Unfortunately, as the present case exemplifies, the process of dispensing justice is misused by the unscrupulous to the detriment of the legitimate. The present case is an illustration of how a simple issue has occupied the time of the courts and of how successive applications have been filed to prolong the inevitable. The person in whose favour the balance of justice lies has in the process been left in the lurch by repeated attempts to revive a stale issue. This tendency can be curbed only if courts across the system adopt an institutional approach which penalises such behaviour. Liberal access to justice does not

mean access to chaos and indiscipline. A strong message must be conveyed that courts of justice will not be allowed to be disrupted by litigative strategies designed to profit from the delays of the law. Unless remedial action is taken by all courts here and now our society will breed a legal culture based on evasion instead of abidance. It is the duty of every court to firmly deal with such situations. The imposition of exemplary costs is a necessary instrument which has to be deployed to weed out, as well as to prevent the filing of frivolous cases. It is only then that the courts can set apart time to resolve genuine causes and answer the concerns of those who are in need of justice. Imposition of real time costs is also necessary to ensure that access to courts is available to citizens with genuine grievances. Otherwise, the doors would be shut to legitimate causes simply by the weight of undeserving cases which flood the system. Such a situation cannot be allowed to come to pass. Hence it is not merely a matter of discretion but a duty and obligation cast upon all courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. We commend all courts to deal with frivolous filings in the same manner."

Result

21-As a fallout and consequence of above discussion, the impugned order dated 05.06.2023 passed in Criminal Misc. Case No. 321 of 2022 is liable to be quashed and is hereby quashed and the order dated 18.12.2021 passed in Maintenance Case No. 1500091 of 2014 (old no.381/2002), (*Sahavi Khatoon Vs.Jamal Khan*), under Section 125 Cr.P.C. by the Principal Judge, Family Court, District Ballia is restored.

22-This Court is of the view that in different circumstances, an inherent power may be exercised in different ways to achieve its ultimate object. Accordingly, in order to secure the end of justice, the applicant-Jamal Khan (husband) is directed to pay entire arrears of maintenance amount to the applicant-Sahabi Khatoon (wife) within one month in accordance with above order dated 18.12.2021 (i.e. at the rate of Rs.5,000/-per month from the date of presentation of the application under Section 125 Cr.P.C. dated 20.12.2002) and in future also he shall pay

the current amount of maintenance on the 10th day of each month to the applicant, failing which, learned Family Court concerned shall immediately initiate recovery proceeding, etc. against the opposite party no.2 (husband) in accordance with law in order to ensure the payment of entire amount of maintenance to the applicant, who has not received single penny for the last 21 years.

23-Accordingly with the aforesaid observations and directions, the instant application under Section 482 Cr.P.C. filed by the applicant-Sahabi Khatoon (wife) is ***allowed***.

OrderDate:-29.11.2023

Saurabh