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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-3065-2014 (O & M)
Judgment Reserved on :19.03.2015
Date of decision: 31.03.2015

Harinder Singh

.... Petitioner(s)

Versus

Baby Diksha and others

.... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Argued by : Mr. Baljinder Singh, Advocate,
for the petitioner.

Mr. Dhiraj Chawla, Advocate,
for the respondents.

PARAMJEET SINGH, J.

Instant revision has been filed by petitioner-husband being aggrieved against the order dated 01.09.2014 passed by the Executing Court whereby the petitioner has been ordered to pay maintenance from the date of filing of the application under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code').

In brief, the facts relevant for disposal of the present petition are to the effect that respondent no.1-Baby Dikshi (daughter),

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respondent no.2-Baby Prabhnoor Kaur (daughter) and respondent no.3-Sonia (wife) filed petition under Section 125 of the Code and vide order dated 13.12.2013, the learned Judicial Magistrate Ist Class, Chandigarh granted the maintenance of ₹ 5,000/- per month to respondent no.3-wife and ₹ 4,000/- each to respondents no.1 and 2-daughters. The said order has attained finality. Thereafter, the respondents filed execution application under Section 128 of the Code wherein issue of interpretation of the order dated 13.12.2013 arose. The petitioner-husband raised a question that the order dated 13.12.2013 is applicable from the date of order, not from the date of filing of the application. It was urged before the Executing Court that the petitioner is only liable to pay maintenance from the date of the order dated 13.12.2013 which cannot be modified under Section 362 of the Code. The Executing Court, vide impugned order dated 01.09.2014, interpreted the order dated 13.12.2013 to the effect that payment of maintenance be made from the date of filing of the application, not from the order dated 13.12.2013. Hence, this revision.

I have heard learned counsel for the parties and perused the record.

The short question that arises for consideration is whether the Executing Court has rightly interpreted the order dated 13.12.2013.

The main contention of learned counsel for the petitioner is that the order dated 13.12.2013 cannot be modified/corrected under Section 362 of the Code, as there is no clerical or arithmetical error in it.

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Learned counsel also contended that the order dated 13.12.2013 is ambiguous and the same should be read in favour of the petitioner and he is entitled to make the payment of maintenance from the date of order, not from the date of filing of application under Section 125 of the Code.

Per contra, learned counsel for the respondents vehemently opposed the contentions of learned counsel for the petitioner and contended that the respondents are entitled to the maintenance from the date of filing of application and spirit of the order dated 13.12.2013 is to this effect. The Executing Court has rightly ordered for payment of maintenance from the date of filing of application, not from the date of passing of the order. Learned counsel further contended that the error occurred in the order dated 13.12.2013 is clerical one, rather a bare reading of the order dated 13.12.2013 makes it clear that intention of the Court was to award maintenance from the date of filing of application. Learned counsel further contended that there is a provision in Section 125 of the Code that maintenance can be granted prior to the date of final order. Otherwise also, wife and children are entitled to maintenance from the date when wife is married and children are born.

I have given my thoughtful consideration to the rival contentions of learned counsel for the parties.

Admittedly, there is no provision in the Code to review/recall an order. Section 362 of the Code reads as under:

“362. Court not to alter judgment -Save as otherwise provided by this Code or by any other

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*law for the time being in force, **no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.***”

Perusal of Section 362 of the Code reveals that only typographical or arithmetical error can be corrected.

A relevant extract of the order dated 13.12.2013 reads as under:

*“12. In view of the above discussion, it is held that petitioner is entitled for maintenance. Keeping in view, the bare necessities of life, needs of the petitioner, earning capacity of the respondent keeping in view of the fact that he is the able bodied person, the standard of life which the parties were enjoying the matrimonial house, their commitments and all surrounding circumstances, this court is of the considered view that it will be in the fitness of things if the respondent is directed to pay a sum of Rs.5,000/- per month to the petitioner no.3 and Rs.4000/- each to the petitioner no.1 & 2 **from the date of filing of the order. Respondent is given one month time to make the payment of all the due maintenance amount and thereafter payment be made before 10th of each month. File be consigned to records, after due compliance.**”*

(...emphasis supplied)

Section 125 (2) of the Code specifically provides that maintenance shall be payable from the date of order, or, if so ordered,

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from the date of the application for maintenance.

In *Shail Kumari Devi & Anr. vs. Krishan Bhagwan Pathak @ Kishun B. Pathak*, (2008) 9 SCC 632, the Hon'ble Supreme Court has held as under:

“44. In our considered opinion, the High Court is not right in holding that as a normal rule, the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance. And if he intends to pass such an order, he is required to record reasons in support of such order. As observed in *K. Sivaram*, reasons have to be recorded in both the eventualities. The Court was also right in observing that wherever Parliament intended the Court to record special reasons, care had been taken to make such provision by requiring the Court to record such reasons.

45. Moreover, duration of litigation is not within the power or in the hands of the applicant and entitlement to maintenance should not be left to the uncertain date of disposal of the case. Keeping in view this hard reality, this Court in *Savitri* held that in absence of prohibition to grant 'interim' maintenance such power could be read in the salutary provision of Section 125 of the Code ensuring maintenance to unable wife to maintain herself during the pendency of proceedings. Even Parliament took into account the reality and by the Amendment Act, 2001 express provision has been made for the purpose.

46. Again, maintenance is a right which accrues to a wife against her husband the minute the former gets married to the latter. It is not only a moral obligation but is also a legal duty cast upon the husband to maintain his wife. Hence, whenever a wife does not stay with her husband and claims maintenance, the only question which the Court is called upon to consider is whether she was justified to live separately from her husband and still claim maintenance from him? If the reply is in the affirmative, she is entitled to claim maintenance. It is, therefore, open to the Magistrate to award maintenance from the date of application and there is nothing which requires recording of 'special reasons' though he must record reasons as envisaged by sub- section (6) of Section 354 of the Code in support of the order passed by him.

47. We, therefore, hold that while deciding an application under Section 125 of the code, a Magistrate is required to record reasons for granting or refusing to grant maintenance to wives, children or parents. Such maintenance can be awarded from the date of the order, or, if so ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary. No special reasons, however, are required to be recorded by the Court. In our Judgment, no such requirement can be read in sub section (1) of Section 125 of the Code in absence of express provision to that

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effect.

Admittedly, maintenance is a right which accrues to a wife against her husband, the minute she is married to the latter, rather it is the duty of the husband to maintain his wife. Similarly, as and when, children are born, it also becomes the duty of the father to maintain them. In ***Savitri Vs. Govind Singh Rawat*** (1985) 4 SCC 337, the Hon'ble Supreme Court considered that although there was no specific provision for grant of maintenance, considering the object underlying the provision and social purpose behind the legislation, such a power must be conceded to the Court. Speaking for the Court, Venkataramaiah, J. (as His Lordship then was) observed;

"It is true that there is no express provision in the Code which authorises a magistrate to make an interim order directing payment of maintenance pending disposal of an application for maintenance. The Code does not also expressly prohibit the making of such an order. The question is whether such a power can be implied to be vested in a magistrate having regard to the nature of the proceedings under Section 125 and other cognate provisions found in Chapter IX of the Code which is entitled "Order For Maintenance of Wives, Children and Parents". Section 125 of the Code confers power on a magistrate of the first class to direct a person having sufficient means but who neglects or refuses to maintain (i) his wife, unable to maintain herself, or (ii) his legitimate or

illegitimate minor child, whether married or not, unable to maintain itself, or (iii) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself or (iv) his father or mother, unable to maintain himself or herself, upon proof of such neglect or refusal, to pay a monthly allowance for the maintenance of his wife or such child, father or mother, as the case may be, at such monthly rate not exceeding five hundred rupees in the whole as such magistrate thinks fit. Such allowance shall be payable from the date of the order, or, if so ordered from the date of the application for maintenance".

Interpreting the relevant provisions of the Code, putting emphasis on the duty of a person liable to pay maintenance and applying the principle of 'social justice', His Lordship proceeded to state;

"In view of the foregoing it is the duty of the court to interpret the provisions in Chapter IX of the Code in such a way that the construction placed on them would not defeat the very object of the legislation. In the absence of any express prohibition, it is appropriate to construe the provisions in Chapter IX as conferring an implied power on the magistrate to direct the person against whom an application is made under Section 125 of the Code to pay some reasonable sum by way of maintenance to the

applicant pending final disposal of the application. It is quite common that applications made under Section 125 of the Code also take several months for being disposed of finally. In order to enjoy the fruits of the proceedings under Section 125, the applicant should be alive till the date of the final order and that the applicant can do in a large number of cases only if an order for payment of interim maintenance is passed by the court. Every court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. This principle is embodied in the maxim ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest (Where anything is conceded, there is conceded also anything without which the thing itself cannot exist.) (Vide Earl Jowitt's Dictionary of English Law 1959 Edn. P. 1797). Whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorised in express terms be also done then that something else will be supplied by necessary intendment. Such a construction though it may not always be admissible in the present case however would advance the object of the legislation under consideration. A contrary view is likely to result in grave hardship to the applicant, who may have no means to subsist until the final order is passed. There is no room for the apprehension that the recognition of such implied power would lead to the passing of interim orders in a large

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number of cases where the liability to pay maintenance may not exist. It is quite possible that such contingency may arise in a few cases but the prejudice caused thereby to the person against whom it is made is minimal as it can be set right quickly after hearing both the parties. The magistrate, may, however, insist upon an affidavit being filed by or on behalf of the applicant concerned stating the grounds in support of the claim for interim maintenance to satisfy himself that there is a prima facie case for making such an order. Such an order may also be made in an appropriate case ex parte pending service of notice of the application subject to any modification or even an order of cancellation that may be passed after the respondent is heard. If a civil court can pass such interim orders on affidavits, there is no reason why a magistrate should not rely on them for the purpose of issuing directions regarding payment of interim maintenance. The affidavit may be treated as supplying prima facie proof of the case of the applicant. If the allegations in the application or the affidavit are not true, it is always open to the person against whom such an order is made to show that the order is unsustainable. Having regard to the nature of the jurisdiction exercised by a magistrate under Section 125 of the Code, we feel that the said provision should be interpreted as conferring power by necessary implication on the magistrate to pass an order directing a person against whom an application

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is made under it to pay a reasonable sum by way of interim maintenance subject to the other conditions referred to there pending final disposal of the application".

Section 125 of the Code and other provisions under which maintenance can be enforced, are designed to prevent vagrancy and destitution and provides a summary and speedy remedy. The provisions have been enacted only to save starving children, parents and wives. The object of these provisions is to secure much needed relief for discarded wives, helpless and deserted children. The object is not to punish for the past neglect but to prevent vagrancy by compelling those who can do so to support those who are themselves unable to do so and have a moral claim to be supported. These provisions are not penal but are merely intended to enforce a duty.

The words “from the date of filing of the order” appearing in the order dated 13.12.2013 coupled with a direction to petitioner-husband of giving one month's time to make the payment of all due maintenance amount clearly indicates that intention of the Court was to grant maintenance from the date of filing of the application. Otherwise also, if the sentence in the maintenance order : *this court is of the considered view that it will be in the fitness of things if the respondent is directed to pay a sum of Rs.5,000/- per month to the petitioner no.3 and Rs.4000/- each to the petitioner no.1 & 2 from the date of filing of the order*, is read in its entirety, the words “from the date of filing of the order” do not make any sense. It was from the date of filing of the

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application. Besides this, the Presiding Officer of the Court, who passed the order dated 13.12.2013, is the same officer, who has also passed the impugned order dated 01.09.2014 in execution application.

In view of above, this Court is of the considered view that due to typographical mistake/error, word “order” has been typed instead of word “application” in the order dated 13.12.2013, therefore, the Magistrate has power to correct the same under Section 362 of the Code. It is only a typographical/clerical error which has been rightly rectified and interpreted in the impugned order. Rather, the spirit of the order is to be seen while interpreting, when there is ambiguity in the original order. No procedural wrangles should be allowed to thwart the course of justice. The respondents in dire need cannot be asked to file fresh application for maintenance. Once the proceedings are set in motion for recovery of the past arrears amount falling due in future till execution of the order, the Executing Court can explain the order in this regard. Another feature in the present case is that the petitioner-husband himself has paid the substantial amount in the shape of cheque from the date of filing of the application under Section 125 Cr.P.C and objection was raised by the petitioner-husband subsequently. It means that the petitioner-husband had also understood that the grant of maintenance is from the date of filing application and in the opinion of this Court, rightly so. There is a provision for interim maintenance, therefore, it can be said that the order dated 13.12.2013 is to be treated as “from the date of filing of the application”, not “from the date of the order”, specifically

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when interim maintenance is awarded. Rather, words “*respondent is given one month time to make the payment of all the due maintenance amount and thereafter payment be made before 10th of each month*” clearly indicate that the petitioner was required to pay the arrears within one month, meaning thereby intention of the Court was to award maintenance from the date of filing of the application.

In view of above, I do not find any illegality or perversity in the impugned order.

Dismissed.

31.03.2015
parveen kumar

(PARAMJEET SINGH)
JUDGE