

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 25.08.2015

Date of decision: 28.08.2015

+ **CRL.REV.P. 270/2013 & CrI.M.A.6835/2014**

BIMLA DEVI

..... Petitioner

Through Mr.M.M. Singh & Mr.Jitender
Kumar, Advs.

versus

SHAMSHER SINGH

..... Respondent

Through Mr.Ram Naresh Yadav, Adv.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J.

1. Heard the counsels for the parties.
2. The present petition brought by the wife, Bimla Devi, is directed against the judgment dated 15.10.2012 passed by the learned Family Court, Rohini, Delhi in Maintenance Case No.279/2010 whereby maintenance of Rs.10,000/- per month has been allowed from the date of the judgment i.e. from 15.10.2012 and not from the date of filing of the petition under Section 125 of the Code of Criminal Procedure (Cr.P.C. for short) i.e. from 13.07.2004.
3. Thus the grievance of the petitioner is only with respect to the date from which the judgment has been made to be reckoned with. It has been submitted on behalf of the petitioner that it took almost eight

years for the Family Court to finally adjudicate the issue regarding maintenance; the quantum of maintenance and the date from which such maintenance would be paid. It has therefore been prayed that the judgment impugned be modified to the extent that the maintenance be paid from the date of the filing of the petition under Section 125 of the Cr.P.C.

4. The learned counsel for the respondent, on the other hand, submits that under Section 125 of the Cr.P.C., there is no such hard and fast requirement of allowing the maintenance from a particular date, especially from the date of filing of the petition under Section 125 Cr.P.C.

5. Learned counsel for the respondent relies upon the judgment rendered on *Shail Kumari Devi and Another vs. Krishan Bhagwan Pathak*: (2008) 9 SCC 632 in which it was held as under:

“43. 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 effect.”

6. It was argued by the learned counsel for the respondent that the Family Court, in its wisdom, has fixed the “relevant date” as the date on which the order for payment of maintenance was passed.

7. Learned counsel for the petitioner, however, has relied upon a judgment of the Supreme Court in *Bhuwan Mohan Singh vs. Meena and others: (2015) 6 SCC 353*, wherein the Supreme Court considering the fact that there had been an abnormal delay in disposal of the proceeding under Section 125 of the Cr.P.C. and such delay being largely attributable to the husband, affirmed the order of the High court which had granted the maintenance from the date when the application under Section 125 Cr.P.C. was preferred.

8. The petitioner was married to the respondent in the year 1981 and a daughter was born out of the wedlock after two years i.e. 1983. The daughter of the petitioner and the respondent was married in the year 2001. The relationship between the petitioner and the respondent started deteriorating thereafter and in the year 2003 the respondent started living separately from the petitioner. The petitioner (wife) alleged illicit relationship of the respondent with whom he intended to marry.

9. Under such circumstances when the respondent completely abandoned his responsibilities as a husband, the petitioner preferred an application on 13.7.2004 for maintenance under Section 125 Cr.P.C. seeking maintenance of Rs.15,000/- per month and Rs.11,000/- as lump sum litigation expenses.

10. The learned Family Court by judgment dated 15.10.2012 awarded the maintenance @Rs.10,000/- per month from the date of the judgment i.e.15.10.2012. The prayer with respect to awarding the litigation expenses was specifically refused on the ground that the petitioner could have had recourse to free legal aid as per the provisions of Delhi legal aid services.

11. During the pendency of the aforesaid application for maintenance preferred by the petitioner, the learned Family Court vide order dated 16.2.2005 had directed for payment of interim maintenance of Rs.1,000/- from the date of filing of the petition. It has been submitted on behalf of the respondent that in an application under Section 24 of the Hindu Marriage Act, 1955 the petitioner (respondent in the divorce petition) was granted an alimony pendente lite @ Rs.2,000/- per month from the date of application and litigation expenses to the tune of Rs.1,000/-.

12. The learned District Judge, Jind, Haryana who passed the aforesaid order on 14.1.2006 clarified that if the petitioner (wife) would get any maintenance under Section 125 Cr.P.C., that shall be adjusted towards the maintenance pendente lite granted by the Court.

13. The respondent had challenged the order of dismissal of divorce petition by way of an appeal before the High Court of Punjab and Haryana (FAO No.M-93/2007). In the aforesaid appeal, the petitioner filed an application for grant of maintenance and litigation expenses. The petitioner was awarded maintenance pendente lite @ Rs.5,000/- per month. In the aforesaid order of the Punjab and Haryana High

Court it was made clear that whatever payment has been made under Section 125 Cr.P.C. would be deducted out of the said maintenance pendente lite directed by the High Court.

14. Thus the petitioner was being paid maintenance @ Rs.5,000/- per month from the date of filing of the petition i.e.13.7.2004 till the pronouncement of judgment in the present case on 15.10.2012.

15. Ever since thereafter the petitioner is being paid the maintenance amount of Rs.10,000/- as directed by the Family Court.

16. The petitioner, it has been stated by the counsel for the respondent, has been staying in the house of the respondent and the respondent is living in government accommodation.

17. During the pendency of the present revision petition, the respondent was directed to deposit the maintenance amount in the savings bank account of the petitioner on or before the 7th day of each calendar month.

18. Section 125 of the Cr.P.C. is an ameliorating provision and is designed as a measure of social justice which is specially meant to protect women and children. It is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself. It is precisely for this purpose that under Section 125 of the Cr.P.C. there is a provision for direction for payment of monthly allowance by way of interim maintenance and expenses of proceedings with a caveat that such petition for interim maintenance would necessarily be disposed of within a period of 60

days from the date of service of notice of the application to the husband.

19. In order to give effect to such social legislation, Family Courts were established, which apart from adjudicating the contentious disputes between the marital parties, also cared for facilitating conciliation and mediation to deal with such disputes in a speedy and expeditious manner. With this background, it can only be stated that the mandate and command of the legislation is to dispose of the petition under Section 125 of Cr.P.C. as expeditiously as possible.

20. Keeping this aspect in mind, the Family Courts have been, in some of the cases, awarding maintenance from the date of the filing of the petition.

21. Maintenance is a right which accrues to a wife against her husband since the inception of her getting married with him. A moral and legal obligation and duty is cast upon the husband to maintain his wife. The necessary corollary is that from the time the wife starts residing separately from her husband, she can claim maintenance from him.

22. An application seeking maintenance under Section 125 of Cr.P.C. is normally expected to be filed by an estranged wife when the husband starts neglecting his duties of maintaining his wife properly. It has been argued that in such an event, when maintenance is demanded, the entitlement to such maintenance is from the date of the filing of the petition.

23. However, there has been a difference of opinion on such question namely the “relevant date” from/when the order of maintenance would be made effective.

24. Section 125 of the Cr.P.C. reads as under:

“Section 125. Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) 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

(d) his father or mother, unable to maintain himself or herself,

*a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate ¹[***], as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:*

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

²*[Provided that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub- section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:*

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation.- For the purposes of this Chapter,-

(a) " minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875); is deemed not to have attained his majority;

(b) " wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

¹*[(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.]*

[Emphasis provided]

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month' s ²[allowances for the maintenance or the interim maintenance and expenses of proceeding, as the

case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment is sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No Wife shall be entitled to receive an ²[allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

25. According to one view since sub Clause (2) of Section 125 of Cr.P.C. declares that the maintenance would be payable from the date of the order or, if so ordered from the date of the application for maintenance, the normal rule would be to reckon the date as the date

of the order. It is only when the magistrate decides that the wife is required to be paid maintenance from the date of the application, it needs be stated in such order granting maintenance to the wife.

26. Another view which gained ground for some time was that since the normal rule would be for grant of maintenance from the date of the order and only under some circumstances, from the date of the filing of the application, special reasons is required to be recorded for directing payment of maintenance from the date of the filing of the petition under Section 125 of the Cr.P.C.

27. After taking into consideration the divergent views over the issue, the Supreme Court in *Shail Kumari Devi and Another vs. Krishan Bhagwan Pathak*: (2008) 9 SCC 632 held that the maintenance could 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. It was made clear that for awarding maintenance from the date of the application, express order is necessary. However, the view which had gained ground for some time that special reasons will have to be recorded for granting maintenance from the date of the application, was not countenanced as there was no such requirement under sub Section 1 of Section 125 of Cr.P.C. Thus no special reason is required to be recorded by the Court in either condition namely making the order of maintenance payable from the date of the order or from the date of the filing of the petition. All that is required is that if the order of maintenance is to be reckoned from the date of filing of

the petition, it must be expressly stated in the order but without according any reason for such a direction.

28. Such debate and controversy about the “relevant date” arose because the intent of the legislature in bringing Section 125 of Cr.P.C. in the statute book was to prevent vagrancy and impecuniosity of a wife who is rendered destitute in the event of her being neglected by her husband.

29. In the case in hand the Family Court had granted interim maintenance to the petitioner @ Rs.1,000/- per month from the date of the filing of the petition (13.7.2004) on 16.2.2005. The petitioner was also being paid maintenance pendente lite under Section 24 of the Hindu Marriage Act, 1955 during the pendency of the divorce case lodged by the respondent and also in the appeal preferred by the respondent against the order of dismissal of the divorce case. The petitioner, therefore, was getting an amount of Rs.5,000/- per month from the initial period of her staying separately from her husband.

30. The daughter born out of the wedlock of the petitioner and the respondent has also been married. The Family Court, in its wisdom, has also refused to accede to the prayer of the petitioner for grant of litigation expenses. The Family Court, therefore, was conscious of the fact that the petitioner was not left completely high and dry and was not on the brink of vagrancy. The delay of eight years in disposal of the application under Section 125 of the Cr.P.C. cannot solely be attributed to the respondent.

31. The aforementioned considerations, therefore, appear to have weighed with the Family Court in granting maintenance from the date of the order, and not from the date of the filing of the petition under Section 125 of Cr. P.C.

32. This Court considers such an order to be a cogent one. In the result revision petition must fail and it fails.

33. The respondent is, however, directed to make payment of the maintenance amount to the petitioner on or before the 7th day of each calendar month. If any arrear has accrued, the same also would be paid within a period of three months from the date of this order.

34. The CrI.Rev.P.No.270/2013 is dismissed and CrI.M.A.6835/2014 is disposed of in terms of the present order.

35. The petition and the application are dismissed and disposed of accordingly.

ASHUTOSH KUMAR, J

AUGUST 28, 2015

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