

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 780 OF 2016

BABURAO S/O GHANSHYAM HANUMANTE
VERSUS
GEETA W/O BABURAO HANUMANTE AND OTHERS

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Advocate for Petitioner : Shri Salunke Sudarshan J.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 01, 2016
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PER COURT :-

1. The petitioner is aggrieved by the order dated 26.6.2016 passed by the learned Magistrate, thereby directing the petitioner to pay arrears of Rs.56,000/- to the applicant / wife and the two minor daughters. The petitioner is also aggrieved by the order dated 2.1.2016, by which, the learned Additional Sessions Judge has dismissed the Criminal Revision Application No.20 of 2016.

2. Shri Salunke, learned Advocate for the petitioner has strenuously criticized the impugned order. Contention is that in the light of the specific bar under the proviso to Section 125(3) of the Criminal Procedure Code, no order directing payment of arrears of maintenance beyond one year from the date of application can be permitted. He has placed reliance upon paragraph No.4 of the judgment of the Honourable Supreme Court in the matter of Poongodi and another Vs. Thangavel [AIR 2014 SC 24] and paragraph

No.8 of the judgment in the matter of Shantha @ Ushadevi and another Vs. B.G.Shivananjappa [AIR 2005 SC 2417].

3. There is no dispute that the learned Magistrate, by its order dated 27.1.2005, had directed the petitioner to pay maintenance allowance of Rs.500/- to the wife and Rs.500/- each to the minor daughters, who were aged 7 and 3 years respectively at the relevant time.

4. It emerges from the record that the petitioner is in arrears. It was in this backdrop that the respondents moved an application seeking recovery of the arrears. As a counter blast, the petitioner moved an application Exhibit 23, praying for a direction that the petitioner should pay arrears of maintenance amount only for a period of one year and not there beyond, by placing reliance upon the proviso to Section 125(3).

5. While deciding the said application Exhibit 23, the learned Magistrate noted that the petitioner was paying arrears in bits and had paid Rs.10,000/- till then. The arrears of maintenance allowance, therefore, were reduced from Rs.66,000/- to Rs.56,000/-.

6. The Honourable Apex Court has observed in paragraph No.4 of the Poongodi judgment (supra), which reads as under:-

“4. A reading of the order dated 21.4.2004 passed by the High Court would go to show that the proviso to Section 125(3) Code of Criminal Procedure has been construed by the High Court to be a fetter on the entitlement of the claimants to receive arrears of maintenance beyond a period of one year preceding the date of filing of the application Under Section 125(3) Code of Criminal Procedure. Having considered the said provision of the Code we do not find that the same creates a bar or in any way effects the entitlement of a claimant to arrears of maintenance. What the proviso contemplates is that the procedure for recovery of maintenance Under Section 125(3) Code of Criminal Procedure, namely, by construing the same to be a levy of a fine and the detention of the defaulter in custody would not be available to a claimant who had slept over his/her rights and has not approached the Court within a period of one year commencing from the date on which the entitlement to receive maintenance has accrued. However, in such a situation the ordinary remedy to recover the amount of maintenance, namely, a civil action would still be available.”

7. After considering the ratio in several judgments, the Honourable Supreme Court in the Poongodi judgment has concluded in paragraph No.7 as under:-

“7. The ratio of the decisions in the aforesaid cases squarely apply to the present case. The application dated 05.02.2002 filed by the Appellants Under Section 125(3) was in continuation of the earlier applications and for subsequent periods of default on the part of the Respondent. The first

proviso to Section 125(3), therefore did not extinguish or limit the entitlement of the Appellants to the maintenance granted by the learned trial court, as has been held by the High Court.”

8. It is thus settled that the mounting arrears beyond the period of one year would not extinguish or limit the rights and entitlement of the beneficiaries to the maintenance allowance granted and the High Court was wrong in concluding that the proviso to Section 125(3) would create fetters on the recovery of arrears beyond one year. The Honourable Apex Court while arriving at the above conclusion, has considered its earlier judgment in case of Shantha (supra).

9. It cannot be ignored in matters of this nature that the destitute wife and minor children suffer on account of the non-payment of maintenance allowance by the husband / father. With the hope that the maintenance allowance would be paid, invariably such hapless claimants keep waiting for the maintenance allowance to flow. The moment the arrears mount beyond one year, the original opponent / husband boldly makes an attempt to claim protection under the proviso to Section 125(3).

10. The Apex Court in the Poongadi judgment (supra) has, therefore, laid down the law that no such bar or fetters could be created on the entitlement of the claimant to the arrears of

maintenance. While so concluding, it is noted that the other remedy to recover the amount of maintenance, through Civil action, would also be available to the claimant.

11. In the light of the above, I do not find that the impugned orders could be termed as being perverse or erroneous. This petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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