

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 366 of 2017**

- Tijuram S/o Jhanakram Lodhi Aged About 40 Years R/o Village Achholi, Police Station & Tahsil- Khairagarh, District- Rajnandgaon, Chhattisgarh.

----Applicant**Versus**

1. Ku. Sarojini D/o Tijuram Lodhi Aged About 16 Years
2. Ku. Shailendri D/o Tijuram Lodhi Aged About 11 Years
3. Pusaiyabai W/o Tijuram Lodhi Aged About 38 Years

Non-applicant No.1 & 2 being minor through natural guardian mother namely Pusaiyabai W/o Tijuram Lodhi,

All are R/o Village Achholi, Tehsil- Khairagarh , District- Rajnandgaon, Chhattisgarh.

---- Respondents

For Applicant : Shri Rakesh Pandey, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****18/08/2017**

1. Learned counsel for the applicant would place reliance on the judgment passed by the the Supreme Court in **Poongodi and another Vs. Thangavel**, wherein the Supreme Court has observed that proviso to Section 125 (3) Cr.P.C. creates a bar or in any way affects the entitlement of a claimant to arrears of maintenance. The Supreme Court further held that what the proviso contemplates is that the procedure for recovery of maintenance under Section 125 (3) Cr.P.C., 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.

2. Perusal of the order dated 09.03.2017 would show that in view of the order dated 27.02.2006 an application was filed on 07.07.2015 for recovery of arrears of the maintenance granted under Section 125 of the Cr.P.C. till 27.06.2015. Therefore, as per the proviso to Section 125 (3) of Cr.P.C. the application for recovery of the arrears filed under Section 125 (3) of the Cr.P.C. on 07.07.2015, the arrears can be recovered from July 2014 and in respect of the rest of the claim of the arrears prior to July 2014, the claimant can avail the remedy available under a civil action.
3. With such observation, the order dated 09.03.2017 is modified to the extent that the claimant shall be entitled for the arrears from July 2014 and the applicant shall be required to deposit the same. In absence thereof, mode of enforcement can be adopted as contemplated under Section 125 (3) of the Cr.P.C. With such observation, the revision is disposed of and the Family Court shall further proceed to adjudicate the claim of the wife and the children in view of the principles laid down by the Supreme Court in the matter of **Poongodi** (*supra*).

Sd/-

Goutam Bhaduri

Judge

Ashu