

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 478 of 2017**

- Smt. Shakila Parveen W/o Shri Firoz Ahmed Aged About 35 Years R/o Ward No. 12, Talapara Bilaspur, Chhattisgarh, Present R/o Yadunandan Nagar Ward No.3, Quarter No. D- 128 Yadunandan Nagar, Police Station Sirgitti, Tahsil, Civil & Revenue District- Bilaspur, Chhattisgarh.

---- Applicant**Versus**

- Firoz Ahmed S/o Shri Razi Ahmed Sonar Aged About 37 Years Driver, R/o Near Pani Tanki Sanjay Nagar, Kumhari, Post- Kumhari, Police Station- Kumhari, District Durg, Chhattisgarh.

---- Respondent

For Applicant	:	Shri Devesh G. Kela, Advocate
For Respondent	:	None, though served

Hon'ble Shri Justice Goutam Bhaduri**C A V Order****(Reserved on 09.10.2017)****(Delivered on 13.10.2017)**

1. This revision is directed against the order dated 25.01.2017, wherein an application preferred by the applicant under Section 125 (3) Cr.P.C. was dismissed on the ground that quantified claim stands satisfied which was originally claimed shelving the further claims fell due during pendency of such claim.
2. Brief facts of this case, are that initially the applicant/wife had filed an application under Section 125 of the Cr.P.C. on 04.08.2010 and demand of Rs.5000/- per month by way of maintenance was prayed for. The said case was registered as MJC No.355/2010. The claim for maintenance was decided with further consent of the

parties on 06.10.2010 an order was passed, whereby the husband/respondent, on the basis of the compromise effected, agreed to pay Rs.1500/- per month to the wife by way of maintenance.

3. For recovery of such amount of maintenance, on 08.09.2015 an application under Section 125 (3) of the Cr.P.C. was filed, wherein an amount for the period from November, 2014 to September-2015 i.e. of 11 months @ 1500/- per month amounting to Rs.16,500/- was claimed. It was further claimed that in absence of payment, the consequential recovery by execution as contemplated by sending the respondent/husband jail may be allowed. Thereafter, (the execution proceeding, which was pending) learned Family Court dismissed the said application by holding that the recovery for which the application under Section 125 (3) of the Cr.P.C. was filed stands satisfied as amount of Rs.16,500/- was paid on a different point of time. The said order is under challenge.
4. Despite notice of this revision, the respondent/husband has chosen not to turn up before the Court.
5. Learned counsel for the applicant would submit that dismissal of such application on such ground is completely erroneous as non-payment of amount of maintenance is a continuous default and the application having been filed on 08.09.2015 for the arrears, the dismissal of the same in 2017 and the subsequent non-payment of amount cannot be ignored, therefore, the order of dismissal is grossly illegal. He referred to the judgment passed in the case of ***Shantha alias Ushadevi and another Vs. B.G. Shivananjappa*** (reported in **AIR 2005 SC 2410**) and would submit that as per the law laid down in such case, the order cannot be sustained and the

same is liable to be set aside.

6. Perusal of the MJC bearing MJC No.86/2016, which was filed under Section 125 (3) Cr.P.C. on 08.09.2015 purports that it was for a period claiming the arrears from November, 2014 to September, 2015 i.e. of 11 months @ 1500/- rs. Per month amounting to Rs.16,500/-. The application having been filed on September, 2015 claiming arrears from 2014, certainly the same can be claimed by invoking jurisdiction under Section 125 (3) Cr.P.C. as it well within the time limitation of one year to recover the same by adopting coercive methods. The order-sheet of the MJC would show that after filing of the petition on 08.09.2015, initially the recovery warrant was passed for recovery of Rs.16,500/- with an endorsement of arrest on 19.11.2015. Subsequently, the order-sheet of 22.12.2015 records that for the recovery of amount of Rs.21000/- up till December-2015 arrest warrant was issued. Likewise, the proceeding continued and on 15.03.2016 the recovery amount inflated to Rs.25,500/- for which the warrant report was ordered. Likewise on 30.04.2016, 20.06.2016, 11.08.2016 and uptill last on 16.11.2016 the amount of non-payment was quantified to Rs.39000/- and it was observed that for recovery of the said amount arrest warrant be issued against the respondent. Thereafter, it appears that the respondent has paid certain amount.
7. The record of the trial Court would show that an amount of Rs.5000/- was deposited in the month of November, 2014, thereafter on 19.11.2015 an amount of Rs.10,000/- was deposited and the order-sheet of 25.12.2016 records that the amount of Rs.1500/- was paid to the applicant, therefore, in total in different

installments Rs.16,500/- was paid.

8. Learned Court below while taking such facts had dismissed the application under Section 125 (3) of the Cr.P.C. by holding that for the claim of Rs.16,500/- the entire arrears for which the application under Section 125 (3) Cr.P.C. was filed stands satisfied. In the opinion of this Court, the same cannot be sustained in terms of ratio laid down in **Shantha** (*supra*). It has been observed by the Supreme Court that there was no need of filing a fresh petition during the pendency of the application under Section 125 (3) Cr.P.C. for maintenance which has fallen due for the period post application and it is implicit in the powers of the Court to make an order directing the husband for such payment of arrears of maintenance up to the decision while disposing of the application for recovery of arrears of maintenance. The Court held that it must be borne in mind that Section 125 Cr.P.C. is a measure of social legislation and it has to be construed liberally for the welfare and benefit of the wife and daughter. It is unreasonable to insist of filing successive applications when the liability to pay the maintenance as per the order passed under Section 125 (1) is a continuing liability.
9. In **Poongodi & Anr. Vs. Thangavel** (reported in **2013 AIR SCW 5764**), the Court reiterated the law laid down in the case of **Shantha** (*supra*) and held that the liability to pay the maintenance under Section 125 Cr.P.C. is the nature of continuing liability. It was further observed that sentencing a person to jail is a mode of enforcement and it is not a mode of satisfaction of the liability and the liability can be satisfied only by making actual payment of the arrears. The whole purpose of sending to jail is to oblige a person

liable to pay the monthly allowance who refuses to comply with the order without sufficient cause or to obey the order and to make the payment and the purpose of sending a person to jail is not to wipe out the liability which he has refused to discharge.

10. In the instant case, it appears that though the application was filed in the Court for Rs.16,500/- and after filing of the MJC, the Court from time to time took into consideration the different liability which accrued and the order-sheet of 16.11.2016 would show that the quantified non-payment of maintenance was recorded as Rs.39000/-, therefore, the MJC Court principally observed the fact that for successive non-payment post application under Section 125 (3) Cr.P.C., no separate application would be needed, however, all of a sudden by reviewing the earlier observation, the MJC was dismissed by order dated 25.01.2017. The said order of dismissal is completely erroneous as the beneficiary cannot be directed to file the successive application having once filed the application under Section 125 (3) Cr.P.C. for recovery of the maintenance. If such course is followed, it will defeat the very object of Section 125 (3) Cr.P.C. and the maintenance thereof which are granted to the wife and children or the dependents. Consequently, the order dated 25.01.2017 is set aside. The MJC No.86/16 is restored with the above observation made in the foregoing paras. The respondent shall be liable to pay the entire arrears of maintenance due to the applicants within a period of three months and the current maintenance commencing from the month of November, 2014 and further it shall be payable on or before 10th of November, 2017 and thereafter shall continue to pay the monthly maintenance on or before 10th of each successive

month. If the above order passed by this Court is not complied with by the respondent, learned trial Court is directed to issue a warrant to arrest the respondent and ensure the same is executed and the respondent be taken into custody to suffer the imprisonment as per the provisions of Section 125 (3) Cr.P.C.

11.in view of such foregoing observation, the revision stands allowed.

Sd/-

Goutam Bhaduri

Judge

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