

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

CRM-M No. 46467 of 2016(O&M)

Date of decision: 3.4.2017

Sharif Mohd. @ Dayal

....Petitioner

VERSUS

Meena and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Dhirinder Chopra, Advocate for the petitioner.

REKHA MITTAL, J.

By invoking Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.'), the petitioner directs challenge against orders dated 03.04.2012 (Annexure P-10); dated 07.03.2015 (Annexure P-14) and dated 27.11.2015 (Annexure P-16) passed by the Courts below.

The wife, daughters and son of the petitioner filed an application under Section 125 Cr.P.C. for grant of maintenance and the same was allowed by the Judicial Magistrate Ist Class, Patiala vide order dated 06.09.2005 (Annexure P-1) in favour of respondents No.2 to 4 and they were allowed maintenance at the rate of Rs.500/- each from the date of petition. An application under Section 128 Cr.P.C. for realization of maintenance granted vide order dated 06.09.2005 was filed. The petitioner filed objections (Annexure P-3), dismissed by the Judicial Magistrate Ist Class, Patiala vide order dated 08.03.2010 (Annexure P-4). The petitioner filed revision before the Court of Sessions and the same was dismissed vide order dated 03.11.2010 (Annexure P-5). The petitioner approached this Court by filing CRM-M No.13570 of 2011 against the orders passed

by the Courts below but the same was dismissed by this Court vide order dated 28.10.2013 (Annexure P-6). In the execution proceedings, respondents filed applications dated 21.12.2011 (Annexure P-7) and dated 09.01.2012 (Annexure P-8) and the Judicial Magistrate Ist Class Patiala passed order dated 03.04.2012 (Annexure P-10) whereby the petitioner was directed to pay arrears along with interest as calculated in the application dated 09.01.2012 with the observations that an amount of Rs.3,63,080/- is payable by the respondent as arrears of maintenance to petitioners No.2 to 4.

Later in June 2015, the petitioner filed an application for recalling order dated 03.04.2012 but the application was dismissed with the observation that Sharif Mohammad has not filed any appeal or revision against the order of attachment passed by the then Judicial Magistrate Ist Class, Patiala and the same has attained finality and there is no provision in the Criminal Procedure Code to recall or review the order. The revision petition preferred by the petitioner against the said order also came to be dismissed by the Additional Sessions Judge, Patiala.

The sole submission made by counsel for the petitioner is that as there is no provision in the Code of Criminal Procedure for awarding interest on the amount of maintenance assessed by the Court, order dated 03.04.2012 whereby the petitioner was directed to pay the arrears along with interest calculated to the extent of Rs.3,63,080/- is liable to be modified by refund of amount representing interest or adjustment of the amount paid in excess towards future maintenance.

I have heard counsel for the petitioner and perused the records.

The order whereby the petitioner was directed to pay an amount of Rs.3,63,080/- towards arrears of maintenance to the children was passed way back in April 2012. The said order was not challenged by the petitioner in appropriate proceedings for the past more than 4 years as the present petition was filed in October 2016. Counsel for the petitioner is not in a position to advance any meaningful arguments to assail the orders passed by the Courts below refusing to recall the order dated 03.04.2012 in respect of attachment of an amount of Rs.3,63,080/-. As per the settled position in law, power under Section 482 Cr.P.C. is extraordinary in nature and is to be exercised by the Court to achieve the twin objects namely to prevent abuse and misuse of process of law or miscarriage of justice. In the case at hand, even if plea of the petitioner is meritorious that some additional amount towards interest has been paid, money has eventually gone to the children. That being so, it is difficult to accept contention of the petitioner that order dated 03.04.2012 passed by the Judicial Magistrate, Patiala warrants intervention in exercise of jurisdiction under Section 482 Cr.P.C. and that too after a lapse of more than 4 years.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

APRIL 3, 2017

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no