

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****RESERVED ON 5-9-2019****DELIVERED ON 11-9-2019****CRMP No. 1569 of 2019**

Sunil Kumar Shrivastava S/o late Shri Mitthulal Shrivastava, aged 59 years, R/o in front of Rajaram Mandir, Gondpara, Bodla, Ward No. 24, District Bilaspur (C.G.)

---- Petitioner**Versus**

1. Smt. Sarita Shrivastava W/o Shri Sunil Kumar Shrivastava, age 53 years,
2. Ku. Pragya Shrivastava, D/o Shri Sunil Shrivastava, age 24 years,
3. Ku. Purna Shrivastava, D/o Shri Sunil Shrivastava, age 21 years,
4. Om Prakhar Shrivastava, aged 14 years (Minor) through his mother Smt. Sarita Shrivastava,

All are R/o MIG 36, Devrikhurd Housing Board Colony, P.S. Torwa, Tahsil & District Bilaspur (C.G.)

---- Respondents

For petitioner	:	Mr. Sangharsh Pandey, Adv.
For Respondents	:	Mr. N.K. Chatterjee, Adv.

Hon'ble Shri Sharad Kumar Gupta, Judge**CAV ORDER**

1. Petitioner has preferred this CRMP under Section 482 of the Code of Criminal Procedure (in brevity Cr.P.C.) for - quashing the impugned order dated 20-6-2019 passed by Addl. Principal Judge, Family Court, Bilaspur (CG) in Cri. MJC No. 273/2018 so far as it relates to the issuance of warrant of arrest in the event of default of payment of arrears of allowance for the maintenance of Rs. 1,19,500/-, to direct the said Court to call the salary slip of respondent No. 2 from ICICI bank, Mangla Branch, Bilaspur, to inquire about her marriage and thereafter pass final order, for direction to the said Court to hold that respondent No. 2 is not legally entitled for the allowance for the maintenance, order passed by said Court dated 21-7-2015 in Cr. MJC No. 196/2013 may be quashed /modified so far as it relates to the allowance for maintenance of respondent No. 2, for direction to the said Court to properly calculate the arrears of allowance for maintenance.

2. In Brief the petitioner's case is that in MJC No. 234/2011 Judge Family Court, Bilaspur passed an order dated 2-1-2012 in favour of

respondent No. 2, 3 and 4 and he was directed to pay them allowance for maintenance at the rate of Rs. 2,000/-, Rs. 2,000/-, Rs. 1,500/- respectively. Thereafter respondents filed an application under Section 127 of the Cr.P.C. wherein the Judge, Family Court, Bilaspur passed an order on 21-7-2015 in favour of respondent No. 2 to 4 and ordered petitioner that he shall pay enhanced allowance for maintenance at the rate of Rs. 2,500, Rs. 2,500, and Rs. 2,000/- respectively. Respondents filed an application under section 125(3) of the Cr.P.C. before the Family Court, Bilaspur on 28-7-2018. His application dated 10-8-2018 filed as Annexure A-5 was not considered by the said Court. Without properly calculating, said Court issued arrest warrant against him in the event of non-payment of arrears of allowance for maintenance Rs. 1,19,500/-. The said Court without following the procedure laid down in Section 125(3) and Section 421 of the Cr.P.C. issued the arrest warrant which is illegal. Respondent No. 2 is employed in ICICI Bank since the year 2015. She is also married.

3. In brief the respondents' case is that against the order dated 20-6-2019 criminal revision would lie. The said Court did not commit any illegality. Respondent No. 2 is not in job. She is also not married.

4. Counsel for the petitioner argued that said Court cannot issue non-bailable warrant straightway. Without following the proper procedure, the impugned order dated 20-6-2019 has been passed by the Family Court, Bilaspur. The said Court ought to have made inquiry whether respondent no. 2 is in job and married. The arrears of the allowance for the maintenance is not properly calculated.

5. Counsel for the respondents submitted that in the case in hand the CRMP under Section 482 of the Cr.P.C. is not maintainable. Considering all factors Family Court Bilaspur has passed orders.

6. It would be pertinent to mention the relevant portion of provisions of Section 125(3) of Cr.P.C. which reads as under :-

“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

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 not exceeding five hundred rupees in the whole, 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.

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.

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.

(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 allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made.....”

7. It would be proper to extract the provisions of Section 421(1) of Cr.P.C. which reads thus :-

“421. Warrant for levy of fine.-(1) When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may,-

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter:”

8. Counsel for the petitioner placed reliance on the decision of Hon'ble Supreme Court in the matter of **Madhu Limaye -v- State of Maharashtra** [1977(4) SCC 551] wherein it has been observed that bar on the power of revision was put in order to facilitate expedient disposal of the cases but in Section 482, Cr.P.C. it is provided that nothing in the Code, which would include section 397(2) also, shall be deemed to limit or affect the inherent power of the High Court. High

Court have no power of revision against an interlocutory order, still the inherent power will come into play when there is no provision for redressal of the grievance of the aggrieved party.

9. Counsel for the petitioner also placed reliance on the decision of Hon'ble High Court of Karnataka in the matter of **K.P. Balaji Singh -v- Lakshamma** [1989 CRLJ 2022] wherein it has been observed that where the appeal or revision do not lie against the interim order passed by Family Court, the application filed under Section 482, Cr.P.C. is maintainable.

10. Counsel for the petitioner also placed reliance on the decision of Hon'ble Supreme Court in the matter of **Krishnan -v- Krishnaveni** [1997 (4) SCC 241] wherein it has been observed that if the revision before the High Court under sub-section (1) of Section 397 is prohibited by sub-section (3) thereof, inherent powers of the High Court still available under Section 482 of the Code as it is paramount power of continuous superintendence of the High Court under Section 482 of the Code, High Court can interfere with the order leading to miscarriage of justice and set aside the order of the Court below.

11. Counsel for the petitioner further placed reliance on the decision of Hon'ble High Court of Punjab and Haryana in the matter of **Karnail Singh -v- Gurdial Kaur** [1974 CRLJ 38] and in the matter of **Om Parkash -v- Vidhya Devi** [1992 CRLJ 658] wherein it has been observed that a bare glance through the provisions of Section 125(2) of the Cr.P.C. leaves no doubt that if any person fails to comply with the order of the Magistrate to pay maintenance allowance without sufficient cause, such Magistrate may issue warrant for levying the amount due in the matter provided for levying fines and may sentence such person for the whole or any part each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment, if sooner made. The perusal of the section 421 Cr.P.C. reveals that there are two methods for levying fine and the Court has been empowered to opt for either of these two modes or both at one and at the same time. Without taking the recourse of provisions of Section 421 of Cr.P.C., warrant of arrest cannot be issued straightway.

12. Counsel for the petitioner also placed reliance on the decision of

Hon'ble Supreme Court in the matter of **Punjab State Warehousing Corporation Faridkot -v- Sh. Durga Ji Trader** [2001(8) SCC 570] wherein it has been observed that availability of alternative remedy of final appeal is not an absolute bar in entertaining petition under Section 482, of the Cr.P.C.

13. In the matter of **Prabhu Chawla -v- State of Rajasthan and another** [AIR 2016 SC 4245], Hon'ble Supreme Court has observed that Section 482 begins with a non- obstante clause to state 'nothing in this Code shall be deemed to limit or affect the inherent powers of the high court to make such order as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice'. A fortiori there can be no total ban on the exercise of such wholesome jurisdiction. The limitation is self restraint nothing more.' Since Section 397 of the Cr.P.C. is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under section 482 of Cr.P.C. only to petty interlocutory orders. A situation wholly unwarranted and undesirable. A petition under Section 482 of Cr.P.C. cannot be dismissed on the ground of availability of alternative remedy under Section 397 of Cr.P.C.

14. Para 20 of the judgment of Hon'ble Supreme Court in the matter of **Umesh Kumar Vs. State of Andra Pradesh and another** [(2013) 10 SCC 591], is relevant which is mentioned below:-

“20. The scope of Section 482 CrPC is well defined and inherent powers could be exercised by the High Court to give effect to an order under CrPC; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the Court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. The law does not prohibit entertaining the petition under Section 482 CrPC for quashing the charge-sheet even before the charges are framed or before the application of discharge is filed or even during the pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the Court should not be exercised

to stifle the legitimate prosecution but can be exercised to save the accused from undergoing the agony of a criminal trial.”

15. In the judgment of Hon'ble Supreme Court in the matter of **Tilly Gifford Vs. Michael Floyd Ishwar and other** [(2018) 11 SCC 205] Hon'ble Supreme Court has observed in Para 3 as under:-

“3.Time and again, it has been emphasised by this Court that the power under Section 482 CrPC would not permit the High Court to go into disputed questions of fact or to appreciate the defence of the accused. The power to interdict a criminal proceeding at the stage of investigation is even more rare. Broadly speaking, a criminal investigation, unless tainted by clear mala fides, should not be foreclosed by a court of law.”

16. In **Parbatbhai Aahir v. State of Gujarat**, [(2017) 9 SCC 641], again the Hon'ble Supreme Court has had an occasion to consider whether the High Court can quash the FIR/complaint/criminal proceedings, in exercise of the inherent jurisdiction under Section 482 Cr.P.C. Considering a catena of decisions on the point, the Hon'ble Supreme Court summarised the following propositions:

“(1) Section 482 CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

(2) xxx xxx xxx

(3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

(4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

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(6) xxx xxx xxx

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(10) xxx xxx xxx

17. In the matter of **Narinder Singh v. State of Punjab** [(2014) 6 SCC 466], after considering the decision in **Gian Singh v. State of Punjab**, [(2012) 10 SCC 303], in para 29.1, Their Lordships summed up as under:

“29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound

the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised **sparingly and with caution.**”

18. In the matter of **State of UP v. Golkonda Linga Swamy** [(2004) 6 SCC 522] Hon'ble Supreme Court observed that while exercising the power under Section 482 of Cr.P.C. the court does not function as a court of appeal or revision.....

19. From the aforesaid provisions of Sections 125(3) and 421 of the Cr.P.C., aforesaid observations made by Hon'ble Punjab and Haryana High Court, Hon'ble Karnataka High Court, Hon'ble Supreme Court, following legal propositions emerge :-

- (i) Inherent powers enumerated in section 482, Cr.P.C. can be exercised by the High Court to give effect to an order under Cr.P.C. to prevent abuse of process of Court and to otherwise secure the ends of justice;
- (ii) Inherent power under Section 482, Cr.P.C. is to be exercised sparingly and with caution;
- (iii) The High Court cannot appreciate the evidence as it can only evaluate material document on record to the extent of its prima facie satisfaction about the existence of sufficient grounds for proceedings against the accused;
- (iv) The Court cannot look into material acceptability of which is essentially a matter for trial;
- (v) Power under Section 482 Cr.P.C. does not permit the High Court to go into disputed questions of fact or to appreciate the defence of the accused;
- (vi) While exercising the power under Section 482, Cr.P.C. Court does not function as a court of appeal or revision;
- (vii) If Court passes an interlocutory order against which as per the provisions of section 397(2), revision cannot be preferred, to redress the grievance on account of abuse of process and to secure ends of justice, an application under Section 482, of Cr.P.C. may be filed and which shall be maintainable;
- (viii) If Court passes an intermediate or final order against which as

per the provisions of section 397(2), revision can be preferred but no revision preferred, then also to redress the grievance on account of abuse of process and to secure ends of justice, an application under Section 482, of Cr.P.C. may be filed and which shall be maintainable;

- (ix) If any person who is ordered to give the allowance for the maintenance, fails without any sufficient reason to comply such order, then Magistrate may issue a levy warrant in the manner provided for levying fines;
- (x) The levy warrant may be executed in either or both of the following ways -
 - (a) by attachment and sell of any movable property belonging to such person,
 - (b) Send such levy warrant to the Collector of the District authorizing him to realize the amount as arrears of land revenue from the movable or immovable property of both, of such person,
- (xi) Court can send such person in imprisonment for remaining unpaid amount after the execution of levy warrant for a term which may extend to one month or until payment if sooner made.

20. Looking to the aforesaid observations made by Hon'ble Karnataka High Court in **K.P. Balaji Singh** (supra), Hon'ble Supreme Court in **Madhu Limaye** (supra), **Krishnan** (supra), **Punjab State Warehousing Corporation Faridkot** (supra), **Prabhu Chawla** (supra), this Court finds that instant CRMP is maintainable. Thus, this Court disallows the argument advanced by counsel for the respondents.

21. From perusal of the true copies of the order sheets of the Family Court, it transpires that said Court without issuing the levy warrant, issued warrant of arrest straightway on 2-1-2019 on the application of respondents. On 20-6-2019 said Court again issued warrant of arrest without issuing and service of the levy warrant. Looking to the provisions of Section 125(3) and 421 of Cr.P.C. and aforesaid observations made by Hon'ble Punjab and Haryana High Court in the matter of **Karnail Singh** (supra) and in the matter of **Om Prakash** (supra), prima facie this Court finds that while passing impugned order dated 20-6-2019 which relates to the issuance of warrant of arrest in the event of default in the payment of arrears endorsed on it, the

proceedings of said Court suffer from abuse of process and intervention under Section 482, Cr.P.C. is necessary to secure the ends of justice. Thus, the impugned order dated 20-6-2019 in above reference is quashed.

22. As per the true copy of application Annexure A/5 dated 10-8-2018 for calling the salary slip of respondent No.2 from ICICI Bank, Bilaspur, it was filed before the said Court but there is no reflection of it in true copies of order-sheets of said Court. Said Court ought to have decided the said application but he failed to do so.

23. As per the certified copy of the order of Judge, Family Court Bilaspur dated 21-7-2015 petitioner did not plead that respondent No. 2 is employed in ICICI Bank Bilaspur. Thus, on the ground of non disposal of said application, impugned order dated 21-7-2015 does not suffer from any illegality.

24. As per the certified copy of the order of Judge, Family Court Bilaspur dated 21-7-2015 petitioner did not plead that respondent No. 2 is married. Moreover petitioner may also file an application under Section 127, Cr.P.C. on change of circumstances. Thus this Court finds that the impugned order dated 21-7-2015 does not suffer from any illegality on this count.

25. From the perusal of record it does not appear that petitioner had made the objection regarding calculation of the arrears of allowance for the maintenance which is due and payable by petitioner. Petitioner may raise the objection regarding calculation of arrears of allowance for the maintenance which is due and payable by him. In such case Family Court, Bilaspur shall consider the objection raised by him and after hearing of both the parties shall calculate the arrears of allowance for the maintenance which is due and payable by him.

26. The instant Cr.MP. is partly allowed as indicated above.

27. In view of above, I.A. No. 1 is also disposed of.

Sd/-
Sharad Kumar Gupta
Judge