

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

CRM-M No.3712 of 2018
Date of decision: 26th March, 2019

Sanjeev Kumar

... Petitioner

Versus

Veena Rani

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Rajinder Sharma, Advocate for the petitioner.

Mr. V.K. Sandhir, Advocate for the respondent.

FATEH DEEP SINGH, J.

This is a petition under Section 482 Cr.P.C. filed by the petitioner husband Sanjeev Kumar against respondent wife Veena Rani whereby he has sought to challenge an impugned order dated 06.12.2017 (Annexure P5) passed by the Court of learned Chief Judicial Magistrate, Amritsar on application for enforcement of order dated 19.02.2014 for issuing warrants for levying of due arrears of maintenance.

Heard Mr. Rajinder Sharma, Advocate for the petitioner; Mr.V.K. Sandhir, Advocate for the respondent and perused the records.

During the course of arguments, it is duly conceded by both the sides that vide orders dated 19.02.2014, the applicant wife was granted maintenance allowance at the rate of Rs.5,000/- per month. It is during the course of time, the wife filed an application for giving effect and enforceability to this order of maintenance to which the husband had

filed objections that the application is beyond the prescribed period of limitation in terms of Section 125(3) Cr.P.C. and the arrears of maintenance beyond one year cannot be laid claim to and has sought to project the impugned order to be bad under law.

The same is sought to be thwarted with much force and vehemence by learned counsel for the respondent wife, Mr.V.K. Sandhir, Advocate arguing that such an order of maintenance cannot be extinguished by any means and is a continuing right which crystallizes over passing days.

Appreciating the submissions, the wife has claimed maintenance with effect from 19.05.2015 to 18.09.2016 by filing execution. It is not displaced by any means that the wife and two kids were each awarded maintenance at the rate of Rs.5,000/- per month, in all totalling to Rs.15,000/- per month. The wife had claimed arrears of maintenance for herself with effect from 19.05.2015 to 18.09.2016 and which is objected to by the husband stating that beyond one year she is not entitled to claim maintenance.

Section 125(3) Cr.P.C. is reproduced as below to lay emphasis:

125. Order for maintenance of wives, children and parents.-

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(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:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is a just ground for so doing.

Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him."

The proviso to this Section lays down that no warrants shall be issued for the recovery of any amount due under this provision and no such levy of amount can be made unless application be made to the Court

within a period of one year from the date on which it became due. The application for enforcement was filed on 27.01.2017 and under Section 125(3) Cr.P.C. one year prior thereto, i.e. 26.01.2016 she can claim maintenance if analogy drawn by learned counsel for the petitioner is taken to be a gospel truth. Furthermore, the proviso to this Section ensures, warrants would be issued only for recovery of any amount due under this provision if a claim by way of application is laid within a period of one year when it became due.

The Hon'ble Supreme Court of India in '**Poongodi and another vs. Thangavel**' 2013(4) RCR(Criminal) 504, has considering scope of Section 125 Cr.P.C. held Section 125(3) Cr.P.C. to be a 'mode of enforcement' and is quite distinguishable from the 'mode of satisfaction' of the liability which can only be by means of actual payment. It has been further stressed by their Lordships that a distinction has to be drawn between the mode of enforcing recovery on the one hand and effecting actual recovery of the amount which has fallen into arrears on the other. It has been further elucidated that sentencing a person to jail is a 'mode of enforcement' and not a 'mode of satisfaction' of the liability and holding that liability can be satisfied by making actual payment of the arrears. Relying upon another view laid down in '**Shantha alias Ushadevi and another vs. B.G. Shivananjappa**' 2005(2) RCR(Criminal) 796, their Lordships have further held that liability to pay maintenance under this provision is in the nature of

continuing liability, where reliance was also placed on ‘**Shahada Khatoon & others vs. Amjad Ali & others**’ (1999)5 SCC 672, and therefore the first proviso to Section 125(3) Cr.P.C. does not extinguish or limit the entitlement of the claimant’s right to arrears of maintenance granted by the Court beyond the period of one year. Thus, in the light of what has come about in the submissions of the two sides, the Court below has placed reliance on **Poongodi’s case (ibid)** and has rightly and correctly come to a conclusion that right to recover such an amount does not extinguishes and therefore, in the light of the same and the settled proposition of law, finding no illegality or perversity in the findings of the Court below, the same need to be upheld. The petition being without any merit, stands dismissed accordingly.

(FATEH DEEP SINGH)
JUDGE

March 26, 2019
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No