

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRR(F) 966/2023

Date of decision: 19.07.2023.

Jatinder Singh

.....Petitioner

Vs.

Rekha Rani and others

.....Respondents

**CORAM        HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:-        Mr. Sarvesh Malik, Advocate for the petitioner.

**Nidhi Gupta, J**

Prayer in this revision petition is for setting aside the order dated 20.4.2023 passed by Principal Judge, Family Court, Nabha in Execution Proceedings CRM/53/19 whereby application of the respondent no.1-wife seeking recovery of arrears of maintenance for four years i.e. from 18.7.2014 to 18.4.2018 under Section 125(3) Cr.PC has been allowed.

Brief facts of the case are that the petitioner was married to respondent No.1 on 22.1.2004. Two children, respondents No. 2 and 3 herein, were born out of their wedlock who are residing with the respondent. It is alleged by the petitioner that on 11.2.2009, the respondent No.1 left the matrimonial home and deserted the petitioner. Thereafter the petitioner even filed a petition under section 9 of the HMA, 1955 on 31.8.2009, which was allowed ex-parte in favour of the petitioner. However, as the respondent No.1 refused to return to the matrimonial home, the petitioner was constrained to

file a petition under section 13 HMA, 1955, which was allowed by ex-parte judgement and decree dated 28.8.2012 (Annexure P2). The same was challenged by respondent No.1 by way of FAO-M-44 of 2017 which is pending consideration before this Court. However, after the expiry of period mentioned in Section 15 of the HMA, 1955, the petitioner got remarried also.

During this period, the respondents had filed a petition under Section 125 CRPC, claiming maintenance from the petitioner, which was allowed vide ex-parte order dated 16.3.2010 (Annexure P1), whereby an amount of Rs.1000 per month was awarded to be paid to respondent No.1, and Rs.500 each to respondents No. 2 and 3 herein.

Thereafter, respondent No. 1 preferred an application under Section 125(3) of the CRPC for recovery of arrears of maintenance from 18.7.2009, till 17.7.2014. The same was dismissed as withdrawn vide order dated 30.10.2018 (Annexure P4), on statement of the respondent.No.1 (Annexure P3) to the effect that she had received full and final payment of the maintenance and accordingly, withdraws the petition being fully satisfied.

It is inter alia, submitted by the Id. Counsel for the petitioner that impugned order has been passed on the 'second' application dated 16.4.2018 filed by the respondents under Section 125(3) Cr.PC. Ld. Counsel submits that earlier also the respondents had filed an application seeking recovery of arrears of maintenance, and the said application was dismissed as withdrawn vide order dated 30.10.2018 being fully satisfied on the basis of statement of even date suffered by respondent no.1 wherein she has stated that she has received "*remaining full and final payment of maintenance amounting to Rs.47,500/- in the present petition from respondent Jatinder Singh. I withdraw the present petition being fully satisfied*". Ld. Counsel submits that

accordingly, second/ present application seeking maintenance was not maintainable.

It is further submitted that as per proviso to Section 125 Cr.PC application claiming arrears of maintenance can only be filed within one year of the maintenance becoming due, however, present application has been filed several years thereafter.

Heard ld. Counsel.

Perusal of the record of the case shows that 'first' application was filed by the respondents seeking recovery of arrears of maintenance from 18.7.2009 to 17.7.2014. Upon clearance of said arrears, respondent no.1 made above mentioned statement dated 30.10.2018 (Annexure P3), and the said application was accordingly, dismissed as withdrawn being fully satisfied vide order dated 30.10.2018 (Annexure P-4).

Respondents then filed 'second' application for recovery of arrears of maintenance which is for the period from 18.7.2014 to 18.4.2018. It is this application which has been disposed of by the impugned order dated 20.4.2023. It is an established position in law that recovery of arrears of maintenance is a recurring right, and therefore, argument on behalf of the petitioner that second application of the respondents seeking payment of arrears of maintenance was not maintainable, is misplaced.

As regards argument on behalf of the petitioner that as per proviso to Section 125 Cr.PC arrears of maintenance can be sought only for one year preceding the date on which they become due, I find no merit in the said argument as it has come on record that the petitioner has paid maintenance on different dates and not on the due dates. Therefore, in my

considered opinion, it is not open to the petitioner to take the objection under proviso to Section 125 Cr.PC. As petitioner has been paying maintenance *albeit* on different dates, he cannot raise objection that arrears of maintenance can be sought only for the period of one year preceding the application praying for the same.

Moreover, both arguments raised on behalf of the petitioner are liable to be rejected, in view of the pronouncement of the Hon'ble Supreme Court in **Poongodi v. Thangavel (SC) : Law Finder Doc Id # 484955** wherein in identical circumstances, where the husband had defaulted in payment of maintenance for 21 years, the Hon'ble Apex Court held as follows:

**“Husband not paying maintenance for about 21 years - Right to recover does not extinguish - The liability to pay maintenance under Section 125 Criminal Procedure Code is in the nature of a continuing liability - In the instant case Husband directed to pay will be arrears within period of six months.**

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2. The appellants are the wife and son of one Thangavel. By an order dated 12.01.1998 passed by the learned trial court each of the appellants have been granted maintenance @ L 300/- per month w.e.f. 04.02.1993 i.e. date of filing of the application under section 125 of the Code of Criminal Procedure (Criminal Procedure Code). As the respondent-husband had not complied with the order of payment, in a miscellaneous petition, i.e., C.M.P. No. 566/1998 filed by the appellant, the trial court by its order dated 21.07.1998 had sentenced the respondent to imprisonment. The default in payment of maintenance was for the period 4.2.1993 to 4.2.1998. On 5.2.2002 another miscellaneous application (Crl. M.P. No. 394/2002) was filed by the appellants claiming maintenance for the period 4.2.1993 to 5.2.2002. The same was allowed by the learned Magistrate on 31.12.2002 against which the respondent had filed Crl. R.C. No. 620/2003. The High Court by its order dated 21.4.2004 held that as Crl. M.P. No. 394/2002 was filed on 5.2.2002, under the first proviso to Section 125(3) Criminal Procedure Code, the appellants were entitled to claim arrears for the period of one year preceding the date of filing of the application

i.e. from 4.2.2001 to 5.2.2002. Accordingly, the High Court directed the respondent (revision petitioner before it) to pay the arrears for the aforesaid period within two months failing which it was directed that an arrest warrant would be issued against the respondent and the sentence of imprisonment earlier imposed by the learned Magistrate would come into effect. As the aforesaid order of the High Court had curtailed the entitlement of the appellants to maintenance to a period of one year prior to the date of filing of the CrI. M.P. No. 394/2002, the appellants have filed this appeal

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4. A reading of the order dated 21.4.2004 passed by the High Court would go to show that the proviso to Section [125\(3\)](#) Criminal Procedure Code has been construed by the High Court to be a fetter on the entitlement of the claimants to receive arrears of maintenance beyond a period of one year preceding the date of filing of the application under Section [125\(3\)](#) Criminal Procedure Code. Having considered the said provision of the Code we do not find that the same creates a bar or in any way effects the entitlement of a claimant to arrears of maintenance. What the proviso contemplates is that the procedure for recovery of maintenance under Section [125\(3\)](#) Criminal Procedure Code, 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.

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6. In another decision of this Court in *Shantha alias Ushadevi and Another v. B.G. Shivananjappa*, 2005(2) RCR (Criminal) 796 : (2005)4 SCC 468 it has been held that the liability to pay maintenance under Section [125](#) Criminal Procedure Code is in the nature of a continuing liability. The nature of the right to receive maintenance and the concomitant liability to pay was also noticed in a decision of this Court in *Shahada Khatoon & Ors. v. Amjad Ali & Ors.*, (1999)5 SCC 672. Though in a slightly different context, the remedy to approach the court by means of successive applications under Section [125\(3\)](#) Criminal Procedure Code highlighting the subsequent defaults in payment of maintenance was acknowledged by this Court in Shahada Khatoon (supra).

7. The ratio of the decisions in the aforesaid cases squarely apply to the present case. The application dated 05.02.2002 filed by the appellants under Section [125\(3\)](#) was in continuation of the earlier applications and for

subsequent periods of default on the part of the Respondent. The first proviso to Section 125(3), therefore did not extinguish or limit the entitlement of the appellants to the maintenance granted by the learned trial court, as has been held by the High Court.

8. In view of the above, we are left in no doubt that the order passed by the High Court needs to be interfered with by us which we accordingly do. The order dated 21.04.2004 of the High Court is set aside and we now issue directions to the respondent to pay the entire arrears of maintenance due to the appellants commencing from the date of filing of the Maintenance Petition (M.C. No. 1/1993) i.e. 4.2.1993 within a period of six months and current maintenance commencing from the month of September, 2013 payable on or before 7th of October, 2013 and thereafter continue to pay the monthly maintenance on or before the 7th of each successive month. If the above order of this Court is not complied with by the Respondent, the learned Trial Court is directed to issue a warrant for the arrest of the respondent and ensure that the same is executed and the respondent taken into custody to suffer imprisonment as provided by Section 125(3) Criminal Procedure Code.” (Emphasis supplied).

Accordingly, in view of the above discussion, I find no merit in the present revision petition, and the same is hereby **dismissed**.

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| <b>19.07.2023.</b>               | <b>(Nidhi Gupta)</b> |
| Joshi                            | <b>Judge</b>         |
| <b>Whether speaking/reasoned</b> | <b>Yes</b>           |
| <b>Whether reportable</b>        | <b>Yes/No</b>        |