

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

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CRR(F)-423-2021 (O&M)

Date of Decision : 16.05.2023

Jatinder Singh

..... Petitioner

Versus

Babaljit Kaur

..... Respondent

2.

CRR(F)-935-2022 (O&M)

Jatinder Singh

..... Petitioner

Versus

Jabarjang Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr.S.S.Sidhu, Advocate
for the petitioner.

Mr.S.S.Bhinder, Advocate
for the respondent.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order, CRR(F)-423-2021 and CRR(F)-935-2022 are hereby adjudicated. For the sake of convenience, the facts are borrowed from CRR(F)-423-2021.

2. On 28.01.2022, the following order was passed :

*“Petitioner has impugned the order dated
30.09.2021 passed in the execution proceedings.*

*Learned counsel for the petitioner contends
that maintenance to the tune of Rs.500/- per*

month was awarded in favour of the respondent and in the execution proceedings, she has claimed arrears for the past 21 years. As per Section 125(3) of Cr.P.C., the arrears can be claimed only for a period of preceding one year and the petitioner has paid the entire maintenance amount for the said period. Furthermore, he has sought to distinguish the judgments relied upon vide the impugned order by arguing that in the said decisions, the applications for realization of the maintenance amount were pending and alive.

Notice of motion for 18.04.2022, subject to the condition that the petitioner shall deposit a sum of Rs. 11,000/- with the Registry within a period of 15 days on account of litigation expenses which may be paid to the respondent on her appearance in the Court.

Till then no coercive action be initiated against the petitioner.”

3. Learned counsel for the parties are relying upon judgment of Hon'ble Supreme Court in **Poongodi and another vs. Tangavel, (2013) 10 SCC 618** wherein it has been held as under :

“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) Cr.P.C. 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) Cr.P.C. Having considered the said provision of the Code we do not find that the same creates a bar or in any way affects 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) Cr.P.C., 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.”

4. Learned counsel for the parties further relied upon judgments of Hon'ble Supreme Court in **Shanta @ Ushadevi and another vs. B.G.Shivananjappa, (2005) 4 SCC 468**, wherein similar view as above has been expressed.

5. Learned counsel for the parties are ad-idem that criminal liability in terms of Section 125(3) Cr.P.C. cannot be fastened in case of non-filing of execution application within one year from the date of entitlement of maintenance, however, right is not extinguished and parties are entitled to avail civil remedies.

6. In view of judgments of the Hon'ble Supreme Court and statements of both the parties, the impugned orders dated 30.09.2021 (CRR(F)-423-2021) and 18.08.2022 (CRR(F)-935-2022) are hereby quashed.

7. The respondents are at liberty to avail civil remedies as permissible by law. The observations of this Court would not affect right of the respondent to claim arrears of maintenance through civil remedy.

8. Disposed of.

(JAGMOHAN BANSAL)
JUDGE

16.05.2023

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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>