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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-24394-2019

Date of decision: 22.11.2024

Karambir

...Petitioner

Versus

Suleta Devi and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sachin Kamboj, Advocate for
Mr. Vivek Goyal, Advocate
for the petitioner.

Mr. Satish Sharma, Advocate for
Mr. B.S. Mamli, Advocate
for the respondents.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been preferred under Section 482, Cr.P.C. seeking setting aside of the impugned orders dated 09.01.2019 (Annexure P-5) and 09.04.2019 (Annexure P-6), passed by the learned Principal Judge, Family Court, Kurukshetra whereby warrant of attachment of property and a notice under Order 21 Rule 66 of CPC have been issued in order to recover the maintenance amount which has fallen in arrears.

2. The marriage between the petitioner and respondent No.1 was solemnized on 04.05.1992 and one son i.e. respondent No.2 was born out of the wedlock. However, matrimonial dispute ensued between the couple and the respondents filed a petition under Section 125 Cr.P.C. seeking



maintenance for themselves. Resultantly, the petitioner was directed to pay Rs. 4,000/- per month to respondent No.1-wife and Rs. 3,000/- per month to respondent No.2-son as maintenance vide judgment dated 22.08.2014. The petitioner preferred a criminal revision against the said judgment. Consequently vide judgment dated 28.04.2017, the learned Additional Sessions Judge, Kurukshetra upheld the maintenance amount granted to the respondents, however, the judgment dated 22.08.2014 was modified to the extent that since respondent No.2 attained majority on 27.04.2012, he will only be entitled to maintenance up to that date. Subsequently, upon non-payment of the maintenance amount, the respondents preferred an execution application for the recovery of the amount of arrears amounting to Rs.6,25,200/- for the period spanning from 09.06.2006 to 27.09.2017. Correspondingly, the learned Family Court directed the issuance of warrant of attachment of property of the petitioner for the realisation of arrears of maintenance towards the respondents vide impugned order dated 09.01.2019 (Annexure P-5). Once the warrant of attachment of property of the petitioner was executed, the learned Family Court issued notice to the petitioner under Order 21 Rule 66 of CPC vide impugned order dated 09.04.2019 (Annexure P-6).

3. Learned counsel for the petitioner, *inter-alia*, contends that as per Section 125(3) of Cr.P.C., there is limitation period of 1 year for recovering the maintenance amount which has fallen in arrears. Therefore, execution application for arrears of maintenance for a period beyond one year is not maintainable. In the present case, warrant of attachment has been issued



against the petitioner by the learned Family Court vide order dated 09.01.2019 i.e. after a period of 10 years.

4. *Per contra*, learned counsel for the respondents submits that the present petition has been filed to simply misuse the process of law and to delay adjudication. There is no perversity or illegality in the impugned orders passed by the learned Family Court and therefore, no interference is warranted by this Court.

5. I have heard learned counsel for the parties and carefully perused the record with their able assistance. The object and purpose behind granting maintenance is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of failure of marriage. At the same time, a just and careful balance must be struck to ensure that this provision does not degenerate into a weapon to punish the other spouse. The Courts are required to conduct the maintenance proceedings while being alive to the legislative intent behind the provision under Section 125 Cr.P.C in its true spirit, which is to provide speedy assistance and social justice to women, children and infirm parents. The provisions of Section 125 Cr.P.C. were enacted as a measure to further social justice and protect dependent women, children and parents, which also fall within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India.

6. A three-Judge Bench of the Hon'ble Supreme Court in ***Vimala (K.) v. Veeraswamy (K.) (1991) 2 SCC 375***, speaking through Justice Fatima Beevi, opined that as follows:

“3. Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It



provides a speedy remedy for the supply of food, clothing, and shelter to the deserted wife.”

A two-Judge Bench of the Hon’ble Supreme Court in ***Kirtikant D.***

Vadodaria v. State of Gujarat (1996) 4 SCC 479, speaking through Justice

Faizan Uddin, opined as follows:

“15. ...While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation.”

7. There is a general tendency on the part of the wife to amplify her needs and the husband to conceal his actual income, making it difficult to determine the earning capacity of the rival claimants with exactitude. The rival claimants must scrupulously bring on record their actual respective earning capacities in order for the Court to arrive at quantum of maintenance which is just and fair in terms of principle of equistatus. The quantum of maintenance must be justifiable and realistic to provide succour to the dependent spouse and also to avoid occurrence of the two extremes of the maintenance being either paltry or extravagant, ensuring that neither of the two is reduced to a life of penury. The adequacy of the maintenance allowance has to be determined by the yardstick of the dependent spouse being able to lead a life of reasonable comfort.

8. However, for proper adjudication of the present case, it is



pertinent to refer to the relevant provisions under Section 125, Cr.P.C., which is extracted below:

Section 125. Orders for maintenance of wives, children and parents.

(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 months allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, 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.

9. The distinction between the mode of enforcing recovery and effecting actual recovery of the amount of maintenance which has fallen in arrears in the context of the provisions under Section 125(3) of Cr.P.C. was discussed in the case of ***Smt. Kuldip Kaur vs. Surinder Singh and anr. (1989) 1 SCC 405***, wherein a 2 Judge bench of the Hon'ble Supreme Court, speaking through Justice M.P. Thakkar, made the following observations:

“6. A distinction has to be drawn between a mode of enforcing recovery on the one hand and effecting actual recovery of the amount of monthly allowance which has fallen in arrears on the other. Sentencing a person to jail is a 'mode of enforcement'. It is not a 'mode of satisfaction' of the liability. The liability can be satisfied only by making actual payment of the arrears. The whole purpose of sending to jail is to oblige a person liable to pay the monthly allowance who refuses to comply with the order without sufficient cause, to obey the order and to make the payment. The purpose of sending him to jail is not to wipe out the liability which he has refused to discharge. Be it also realised that a person ordered to pay monthly allowance can be sent to jail only if he fails to pay monthly allowance 'without sufficient cause' to comply with the order. It would indeed be strange to hold that a person who 'without reasonable cause' refuses to comply with the order of the Court to maintain his neglected wife or child would be absolved of his liability merely because he prefers to go to jail. sentence of jail is no substitute for the recovery of the amount of



monthly allowance which has fallen in arrears Monthly allowance is paid in order to enable the wife and child to live by providing with the essential economic wherewithal. Neither the neglected wife nor the neglected child can live without funds for purchasing food and the essential articles to enable them to live. Instead of providing them with the funds, no useful purpose would be served by sending the husband to jail Sentencing to jail is the means for achieving the end of enforcing the order by recovering the amount of arrears. It is not a mode of discharging liability. The section does not say so. The Parliament in its wisdom has not said so commence does not support such a construction. From where does the Court draw inspiration for persuading itself that the liability arising under the order for maintenance would stand discharged upon an effort being made to recover it? The order for monthly allowance can be discharged only upon the monthly allowance being recovered. The liability cannot be taken to have been by sending the person liable to pay the monthly allowance, to jail. At the cost of repetition it may be stated that it is only a mode or method of recovery and not a substitute for recovery. No other view is possible.” (emphasis added)

Reliance in this regard may further be placed on judgments of the Hon’ble Supreme Court rendered in ***Shantha alias Ushadevi and Another v. B.G. Shivananjappa, (2005)4 SCC 468*** and ***Shahada Khatoon & Ors. v. Amjad Ali & Ors., (1999)5 SCC 672***.

10. A close scrutiny of Section 125(3) reveals that in case of breach of the order directing payment of maintenance, the Magistrate may issue warrant for levying the amount due in the manner provided for levying fines as prescribed under Section 421 of Cr.P.C. and the Magistrate may also sentence such person for the whole or any part of each month allowance. Both of these are methods to impel the person against whom execution proceedings have been initiated to pay the maintenance amount which has fallen in arrears. However, the employment of these modes of enforcing recovery is not to be confused with the actual realisation of the maintenance amount due or as a



satisfactory substitute for the latter. The ambit and scope of the powers as devolved by Section 125(3), are not to penalize or punish the transgressing party, who hasn't complied with the order, but rather, to drive him to a situation where he is put under an obligation to pay the monthly allowance and makes the actual payment of arrears. The provisions under Chapter IX of Cr.P.C. are in the nature of a beneficent legislation. The purpose and object is to provide a simple and speedy remedy, and to ensure that the deserted wife, children and parents are not left without any means for subsistence.

11. At this juncture, it would be profitable to cite the judgment delivered by a Division Bench of the Rajasthan High Court in ***In Re A Ref. Under Section 395 Cr.P.C., 1973 By District and Sessions Judge, Pali vs. Unknown 2022 (1) R.C.R. (Criminal) 435***, wherein the following was observed:

"7. Firstly, we consider the plain language of Section 125(3) Cr.P.C., 1973 which provides that "if a person ordered to pay maintenance, fails without sufficient cause to comply with the order, the 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 for the maintenance....., to imprisonment for a term which may extend to one month or until payment if sooner made." Splitting the provision for better understanding, it becomes clear that it operates in four parts:

- (i) Non-compliance of the order of maintenance by the person directed to pay monthly maintenance,*
- (ii) Every breach of the order,*
- (iii) Issuance of warrant for levying the amount due in the manner provided for levying fines and*
- (iv) Sentencing such person for the whole or any part of each month's allowance, imprisonment for a term which may extend to one month.*

Meaning thereby, if the person ordered to make payment of maintenance fails to do so, the Magistrate shall be empowered to issue warrant for recovery of the maintenance due in the manner provided for levying fines and may also sentence such person for the whole or any



*part of each month's allowance to imprisonment for a term which may extend to one month. Clearly thus, every single breach of the monthly maintenance order gives rise to a distinct cause of action calling for issuance of a warrant for levying of the amount and a discretion is given to the Magistrate that in the event of non-payment, the person ordered may be sentenced to imprisonment for a term which may extend to one month for each month's default. **The clear intention of the legislature is that as the order of maintenance is stipulated to provide maintenance on a monthly basis, every breach thereof is an infringement for which a separate warrant for levying fine is to be issued and in addition thereto, the person so ordered can be sentenced to imprisonment for a term which may extend to one month concurring with every breach.** The application for recovery of the maintenance amount can be filed within a period of 12 months from the date it becomes due. The section does not provide that the claimant must file separate applications for recovery of each month's allowance.” (emphasis added)*

12. A perusal of the impugned orders passed by the learned Family Court and the paper-book make it evident that despite attachment of the property of the petitioner, he has failed to appear before the Court and make the actual payment of arrears. A perusal of subsection (3) of Section 125, Cr.P.C. discloses that Magistrate shall be empowered to issue warrant for recovery of the maintenance due in the manner provided for levying fines which also includes attachment of property. Consequently, the averment of the learned counsel for the petitioner that the issuance of warrant of attachment of property has been illegally issued, does not merit acceptance.

13. However, the contention advanced by the learned counsel for the petitioner that the execution proceedings for the realisation of the entire amount are barred by limitation merits acceptance. Section 125(3) stipulates that an execution petition for recovery of the arrears of maintenance must be confined to one year immediately preceding the date of filing the petition. In the present case, the execution application was moved on 06.10.2017 and therefore, the respondents can only seek recovery of arrears as accruing from



07.10.2016. Be that as it may, it is pertinent to mention that the limitation period of one year as contemplated under Section 125(3) of Cr.P.C. merely proscribes the mode of recovery through the Court and not the liability itself. There still remains a continuing liability to pay the arrears in maintenance even after the right to recover such arrears under Section 125 Cr.P.C is extinguished.

14. As such, the respondents can always pursue the remedy of filing a civil suit for recovery to recover the arrears of maintenance that became due prior to one year from the date of application before the Family Court, subject to just exceptions. A two Judge Bench of the Hon'ble Supreme Court in ***Poongodi and another vs. Thangavel (2013) 10 SCC 618***, speaking through Justice Rajan Gogoi, observed as follows:

*“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.**”*

15. In view of the above discussion, the present petition is disposed of



in the following terms:

- (i) The impugned orders dated 09.01.2019 (Annexure P-5) and 09.04.2019 (Annexure P-6) are upheld to the extent of the issuance of warrant of attachment of property and notice under Order 21 Rule 66 of CPC in order to recover the maintenance amount which has fallen in arrears.
- (ii) However, the execution proceedings can only be pursued for arrears accrued in the year preceding the date of the filing of the execution petition i.e. for the period of 07.10.2016 to 06.10.2017.
- (iii) The respondents will be at liberty to file a civil suit for recovery to recover rest of the amount that has fallen in arrears i.e. the maintenance amount accruing before 07.10.2016.

16. Pending miscellaneous application(s) if any, shall also stand disposed of.

22.11.2024
manisha

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No