

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRR(F)-22-2020 (O&M)
Date of decision:18.03.2024

ALOK

....Petitioner

V/s

SUNITA

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. Rajesh Khandelwal, Advocate for the petitioner.

Mr. Naveen S. Bhardwaj, Advocate for respondent.

SUMEET GOEL, J.

1. Present Criminal Revision Petition has been filed by the petitioner on 19.12.2019 challenging three separate orders passed by the Learned Family Court, Hisar. Challenge has been laid to order dated 17.04.2017 passed by Learned Family Court, Hisar whereby the defence of the petitioner in a matter pertaining to grant of maintenance, under section 125 of the Code of Civil Procedure was struck off; Judgment dated 05.06.2017 passed by Learned Family Court, Hisar, finally deciding the petition under section 125 Cr.P.C., filed by the respondent seeking grant of maintenance; and order dated 26.11.2019 passed by Learned Family Court, Hisar in Execution Petition filed by the respondent seeking recovery of maintenance amount from the petitioner, whereby conditional warrant of arrest of the petitioner has been issued.
2. The parties are being referred to as petitioner and respondent as per their status in the present revision petition, in order to ward off any ambiguity. Facts germane to the adjudication of the present lis are that the respondent being legally wedded wife of the petitioner filed a petition

dated 25.02.2015, under section 125 Cr.P.C. in the Family Court, Hisar. In the said petition it was averred that the marriage of petitioner with respondent was performed on 18.05.2008. The parents of the respondent spent a huge amount on her marriage but the petitioner and his family members were not happy with the dowry brought by the respondent. The matrimonial relations between the parties became sour owing to the demands of dowry by the petitioner and his family members. Eventually the respondent was deserted by the petitioner. She completed her Ph.D. taking financial help from her parents. The respondent did not own any movable and immovable property anywhere in India and she had no independent source of income and as such she was living at the mercy of her parents. It is averred that the petitioner being a man of means earns more than Rs.2,00,000/- per month from his property dealing business at Gurgaon. Besides that he is the only son of his parents who own moveable and immoveable properties including agricultural land to the extent of 25 acres from which they earn more than Rs.4 lacs per annum.

3. The petition filed by the respondent was contested by the petitioner by filing a reply thereto, wherein it was averred that the respondent herself had never been a good wife and daughter-in-law. She pressurised the petitioner to get the properties of his father transferred to his name. Upon refusal to do so, she started getting aggressive and threatened to implicate the petitioner and his parents in false cases. It is the respondent who treated the petitioner and his parents with acts of violence. She is an able-bodied woman and being a Ph.D. she has been working as Research Associate with the HAU, Hisar and earning not less than Rs.30,000/- per month. The petitioner though is qualified but is not able to work due to alleged depression caused by

the respondent. He has not inherited any property from his parents.

4. The Learned Family Court, Hisar, after completion of pleadings in the case vide order dated 04.09.2015 held that the parties shall in their evidence place on record affidavits only supported with documents, if any, in respect of their respective claims. On 07.11.2015 the respondent tendered her affidavit Ex.PW1/A in her evidence. Thereafter, the case was adjourned by the Learned Family Court, Hisar for evidence of petitioner. After availing several opportunities the petitioner in his evidence tendered his affidavit as RW-1/A along with documents Ex.R-1 to R-6 and closed his evidence. Learned Family Court, Hisar, thereafter, posted the case for arguments. In view of the conduct of the proceedings, order passed by the Learned Family Court and statements made by the parties, they seem to have waived their right of cross-examination.
5. The learned Family Court thereafter, posted the case to different dates awaiting the presence of parties in person to make efforts for conciliation. However, the learned Family Court vide order dated 17.04.2017 observed that since the petitioner failed to obey the orders of Court requiring his presence in the court, struck off the defence of the petitioner and adjourned the case for arguments. Thereafter, vide Judgment dated 05.06.2017 Learned Family Court, Hisar allowed the petition filed by the respondent under section 125 Cr.P.C. and granted Rs.10,000/- per month as maintenance to the respondent from the date of application besides Rs.5500/- as litigation expenses.
6. The respondent filed execution petition seeking recovery of the above maintenance amount awarded by the Learned Family Court, in the

Family Court, Hisar in the year 2017 itself. However, it seems that owing to the non-compliance of the Judgment dated 05.06.2017 by the petitioner, and the resultant non-payment of maintenance amount to the respondent, the Learned Family Court vide order dated 26.11.2019 issued fresh conditional warrants against the petitioner.

7. In the present Criminal Revision Petition the Petitioner has come up with plea that his defence was wrongly struck off by the learned Family Court vide order dated 17.04.2017. The Judgment dated 05.06.2017 passed by the Learned Family Court is bad in law and against the facts and evidence adduced on record of the case. The learned Family Court failed to appreciate that the petitioner due to acts of respondent started living in stress and became mentally/medically disturbed and as a result he left his house on 01.01.2011 and returned in January, 2013 after a gap of 2 years. The petitioner thereafter continued behaving clinically abnormal.
8. Heard the Learned Counsel for the parties and perused the case file.
9. After going through the case file and arguments of the parties minutely, I find that no serious objection to the order dated 26.11.2019 passed by the Learned Family Court, in execution petition, issuing conditional warrant of the petitioner, has been laid. The said order has been appended to the case file just for the sake of pleadings, without showing any cause or grievance with regard to the legality or sustainability of said order. The only challenge tried to be laid against the same is that since it flows out from the Judgment dated 05.06.2017, so it is bad in law. Therefore, in essence it is the judgment dated 05.06.2017 and the Order dated 17.04.2017 passed by the Learned

Family Court that are challenged in the present Criminal Revision Petition.

10. The Petitioner by astuteness in drafting has tried to take cover of the Order dated 26.11.2019 passed in execution petition just to cover up the issue of limitation, which is not permissible in law. The passing of order dated 26.11.2017 in execution petition issuing conditional warrant of arrest of the petitioner, due to non compliance of Judgment dated 05.06.2017 passed by the Learned Family Court cannot in any manner, extend the period of limitation for challenging the said Judgment.

11. Perusal of paper book of the case shows that at the time of filing of the Criminal Revision Petition the registry raised a specific objection with regard to the maintainability of the same being time barred. The petitioner in response to the said objection gave a reply in the following words:

“As the revision is filed under section 401 of Cr.P.C., so no limitation is there & No requirement of filing delay application, otherwise also the case has re-occurring cause of action and same can be challenged on fresh cause of action every month, petitioner being directed to pay maintenance on every month. Hence fresh cause of action every month. So kindly, put up as it is.”

12. The above stance put forth on behalf of the petitioner with regard to the limitation period for Challenging the Order dated 17.04.2017 and Judgment dated 05.06.2017 by filing Criminal Revision Petition on 19.12.2019 is palpably wrong. The contention put forth on behalf of the petitioner that no limitation period is prescribed for filing petition under section 401 of Cr.P.C. is ex-facie wrong. Section 401 of the Criminal Procedure Code dealing with the revision powers of the High Court is as under:

“401. High Court's powers of revision. - (1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by Section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.”

13. Bare perusal of the above quoted section 401 of Cr.P.C. makes it abundantly clear that while exercising powers under section 401 of the Code of Criminal Procedure, the High Court acts as a court of revision, against the impugned order. The period of Limitation to file a Criminal Revision Petition before any Court is governed by Article 131 of the Limitation Act, which prescribes that the period of Limitation for filing Criminal Revision Petition is 90 days from the date of Order sought to be revised. Since the date of impugned order itself is specifically provided as a starting point for period of computation of limitation for filing Revision against the said revision, therefore, the plea taken on behalf of the Petitioner regarding recurring cause of action is wholly misconceived.

The plea of recurring cause of action, flowing from the own act of the petitioner in not complying with the Judgment passed by the Family Court cannot inure any benefit to the petitioner as it is trite law that a party to the lis cannot be held entitled to take benefit of his own wrongs. Even otherwise such a interpretation would certainly militate against the intent of the legislature while enacting Article 131 of the Limitation Act and would render the said provision of law otiose, which is not permissible in law.

14. The present Criminal Revision Petition filed by the petitioner is barred by 904 days on the date of its filing. The petitioner has chosen not to seek condonation of said delay by furnishing any cogent and plausible reason. The Hon'ble Supreme Court of India in case titled as N. Balakrishnan vs. M. Krishnamurthy, 1999(2) RCR (Civil) 578 while dealing with the aspect of the delay in filing legal proceedings has held as under:

“11. Rules of Limitation are not meant to destroy the right of parties. They are meant to seek that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixed a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a life-span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties, they are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that

every legal remedy must be kept alive for a legislatively fixed period of time.”

15. Section 3 of the Limitation Act casts a mandate on the Court to dismiss every suit, appeal and application made after the prescribed period. However, this mandate of section 3 is subject to the extension of period of limitation prescribed, if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. In the present case, no such sufficient cause has been pleaded or proved by the petitioner. The Hon’ble Supreme Court of India in case titled *Gannmani Anasuya & Ors. Vs. Parvatini Amarendra Chowdhary & Ors*, 2007(3) RCR (Civil) 381, while dealing with the application of section 3 of the Limitation Act has held as under:

“In terms of Section 3 of the Limitation Act, it is for the court to determine the question as to whether the suit is barred by limitation or not irrespective of the fact that as to whether such a plea has been raised by the parties. Such a jurisdictional fact need not, thus, be pleaded.”

The Hon’ble Supreme Court of India, in case titled as *State of Gujarat Vs M/s Kothari and Associates*, 2015(4) RCR (Civil) 893 held:

“Section 3 of Limitation Act explicitly states that “every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defense.” It is thus incumbent upon the Court to satisfy itself that the suit is not barred by limitation, regardless of whether such a plea has been raised by the parties. In Union of India v. British India Corporation Ltd (2003) 9 SCC 505, it has been opined that “the question of limitation is a mandate to the forum and, irrespective of the fact whether it was raised or not, the forum must consider and apply it, if there is no dispute on facts.” It is thus irrelevant that the Appellant State had not raised the issue of limitation before the Trial Court. A duty was cast on the Court

to consider this aspect of law, even on its own initiative, and since it failed to do so, the Appellant State was competent to raise this legal question in appeal or indeed even in any successive appeal. Close to a century ago, in Lachhmi Sewak Sahu v. Ram Rup Sahu AIR 1944 Privy Council 24, it has been held that the point of limitation is available to be urged even in the Court of last resort. Furthermore, we are not confronted with a situation where the plea of limitation is a mixed question of fact and law, or where additional evidence needs to be adduced. The submissions of Learned Counsel for the Respondent to the effect that the Appellant is foreclosed and precluded from urging the plea of the bar of limitation are meretricious and are rejected.”

16. Perusal of the impugned order dated 17.04.2017 and Judgment dated 05.06.2017 makes it clear that though it is held by the Learned Family Court that the defence of the petitioner is struck off, but in essence there is no prejudice suffered by the petitioner on account of the said order in the present proceedings. The petitioner had led and closed his evidence in the matter. His counsel was appearing in the proceedings till the final judgment was passed by the Family Court. The parties before the Family Court had opted not to resort to their right of cross-examination of the witnesses. The impugned order and Judgment were passed in presence of counsel for the petitioner. It is not the case of the petitioner that he was not aware about the passing of the said order and judgment against him. Instead the petitioner's conduct in the case clearly indicates that he deliberately delayed the matter of payment of maintenance to the respondent and even abstained from participating in the execution proceedings owing to the issuance of conditional warrant of arrest against him by the Family Court. The petitioner by dint of his conduct has clearly not come to the court with clean hands and his malafide intent in pursuing the present Criminal Revision Petition before

this Court is apparent in causing sheer harassment to the respondent. Besides all this a false and utterly wrong stand has been taken by the petitioner in the present proceedings while asserting that there is no delay in filing of the present revision petition and that no period of limitation has been prescribed for invoking the power of the Court under section 401 of the Cr.P.C. The Hon'ble Supreme Court of India in case titled as **Balwant Singh vs. Jagdish Singh & Ors. 2010(3) RCR (Civil) 856** has held as under:

“Liberal construction of the expression 'sufficient cause' is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant, to whom want of bona fide is imputable. There can be instances where the Court should condone the delay; equally there would be cases where the Court must exercise its discretion against the applicant for want of any of these ingredients or where it does not reflect 'sufficient cause' as understood in law. [Advanced Law Lexicon, P. Ramanatha Aiyar, 2nd Edition, 1997] The expression 'sufficient cause' implies the presence of legal and adequate reasons. The word 'sufficient' means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the Court, in exercise of its judicial discretion, to treat the delay as an excusable one. These provisions give the Courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated. We find it unnecessary to discuss the instances which would fall under either of these classes of cases. The party should show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient

to see whether it could have been avoided by the party by the exercise of due care and attention. [Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edition, 2005].”

17. The conduct of the petitioner in the present criminal revision petition if permitted to prevail would certainly result against the benevolent purpose of enactment of section 125 of Cr.P.C. and creation of Family Courts for furtherance of the said benevolent purpose. The only endeavour in the present criminal revision petition on behalf of the petitioner is just to keep the litigation regarding maintenance claim of the respondent, alive by hook or by crook, in order to ward off his bounden liability to maintain the respondent in terms of the Judgment dated 05.06.2017 passed by the Family Court. The Hon'ble Supreme Court of India in case titled as ***Bhuwan Mohan Singh vs. Meena & Ors., 2014(3) RCR (Criminal) 723*** has held:

“3. Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short "the Code") was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the Court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a

destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able bodied. There is no escape route unless there is an order from the Court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds."

18. In view of the above findings the present Criminal Revision Petition fails and is dismissed being grossly time barred. The petitioner by his own act and conduct of not coming to the court with clean hands is not entitled to any equitable relief. There is no legal or procedural impropriety and illegality in the impugned orders and judgment passed by the Learned Family Court. The Criminal Revision Petition is accordingly dismissed.

March 18, 2024
Jatin

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No