



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

917 CRIMINAL WRIT PETITION NO. 1809 OF 2025

SAYAJI TULASHIRAM BHOR

VERSUS

SAVITA SAYAJI BHOR

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Advocate for the Petitioner : Mr.N.N.Bhagwat

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CORAM : MEHROZ K. PATHAN, J.

DATE : 24.02.2026

P.C. :

1] The petitioner has challenged the order dated 30.09.2025 passed by the learned Judicial Magistrate First Class, Rahata, thereby deciding application below Exh.11 by the non-applicant as well as application filed below Exh.13 by the wife for recovery of arrears of the maintenance of the 44 months amounting to Rs.1,76,000/-

2] The learned counsel for the petitioner has raised only ground for interference of this Court as regards the provisions of Section 125 (3) of the Criminal Procedure Code. He further submits that the application for recovery of the maintenance amount of 44 months was not tenable in view of proviso to sub-clause (3) of Section 125 of the Criminal Procedure Code. Section 125 (3) of the Criminal Procedure Code reads as under :

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

(1) ...

(2) ...

(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 2[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:

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 just ground for so doing.

3] The learned counsel for the petitioner further submits that the respondent-wife has filed an application for claiming 44 months arrears of amount of maintenance and during pendency of the said application, again 9 months maintenance earlier was added by amending the prayer clause. The learned counsel, therefore, submits that as per proviso to sub-clause (3) of Section 125 of the Criminal Procedure Code, the application has to be made within a period of one year from the date on which arrears had become due. The application itself was not maintainable and hence the application filed by the wife claiming arrears of the 44 months + 9 months during pendency of the application was liable to be rejected.

4] The learned trial Court has taken into consideration aforesaid contention raised by the petitioner herein. After considering the proviso to sub-clause (3) of Section 125 of the Criminal Procedure Code, the learned trial Court also considered the judgment of the Hon'ble Supreme Court in the case of **Poongodi and ors Vs. Thangavel**, reported in **2013 SCC Online SC 893**, wherein it is held that the said proviso does not create any bar nor fetter on claiming arrears of maintenance. The appellant wife was therefore held to be entitled to claim arrears of maintenance beyond one year. Respondent-husband was directed to pay entire arrears of maintenance due from 04.02.1993. It was held that Section 125 (3) does not

distinguish or limit entitlement to arrears of maintenance. Proviso in question only contemplates procedure for recovery of the maintenance. However, in such situation remedy to recover the amount of maintenance would still be available.

5] The decision of the Hon'ble Supreme Court in the case of *Kuldip Kaur Vs. Surinder Singh and Anr.* reported in **MANU/SC/0451/1988 : [1989] 1 SCC 405** wherein it is held in para 6 as under :

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. A 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. Parliament in its wisdom has not said so. Commonsense 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 discharged 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. That is the reason why we set aside the order under appeal and passed an order in the following terms:

...

6] The trial Court has, therefore, rightly appreciated the judgment in the case of **Poongodi and others** [supra]. I do not find any error in the impugned order dated 30.09.2025 passed by the JMFC, Rahata so as to seek interference of this Court under its supervisory jurisdiction under Article 227 of the Constitution of India. The Writ Petition is, therefore, devoid of substance and the

same is liable to be dismissed. Hence, the Writ Petition is dismissed.

[MEHROZ K. PATHAN]
JUDGE

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