

Rajendran Vs. Minor Revathi

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Court : Chennai

Decided On : Oct-31-1996

Reported in : 1997(1)ALT(Cri)727; I(1997)DMC8

Judge : M. Karpagavinayagam, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125(3)

Appeal No. : Crl. Revision Case No. 469 of 1994

Appellant : Rajendran

Respondent : Minor Revathi

Advocate for Def. : J. Bhuvanesh Kumar, Adv. for ;D. Malaichamy, Adv.

Advocate for Pet/Ap. : T. Priya, Adv. for A.S. Vijayaragavan, Adv.

Disposition : Petition allowed

Judgement :

M. Karpagavinayagam, J.

1. This is revision filed against the order of learned Judicial Magistrate No. 2, Pudukottai, in Cri. M.P. No. 3309 of 1993, dated 4.7.1994, directing the petitioner to pay the arrears of maintenance to the respondent/minor daughter.

2. It is contended in this revision by the petitioner, that under Section 125(3) Cr.P.C., execution petition can be filed claiming arrears of maintenance only for 12 months period, i.e., one year, from the date on which it became due, but the order impugned in this revision has been passed by the learned Magistrate, allowing the claim for 29 months period. It is further submitted by Ms. T. Priya, learned Counsel appearing for the petitioner, that the application under Section 125(3), Cr.P.C., was not made within a period of one year from the date on which the amount became due. Learned Counsel relied upon a decision in *Govind Sahai v. Prem Devi*, 1988 Cr.L.J.638, wherein the Jaipur Bench of Rajasthan High Court has held as follows :

'However, there is some substance in the second contention of the learned Counsel for the petitioner. Proviso to Section 125(3), Cr.P.C./ expressly provides that no warrant shall be issued for the recovery of any amount due under Section 125 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. It may be mentioned here that the Judicial Magistrate, Malpura by his order dated Nov. 22, 1984 had granted maintenance to the non-petitioner for herself and for the daughter with retrospective effect i.e. with effect from March 21, 1984, when the non-petitioner had made the application for maintenance under Section 125(1) of the Code. The arrears of maintenance from March 21, 1984 to November 22, 1984 became due on Nov. 22, 1984 when the Judicial Magistrate passed the order allowing maintenance. The application under Section 125(3) of the Code was made by the non-petitioner before the Judicial Magistrate on Dec. 12, 1985. This application was clearly beyond one year from the date on which the arrears upto Nov. 20, 1984 could be issued by the Magistrate. He could only issue warrant for the levy of the maintenance amount which had become due with effect from Dec. 21, 1984 because only in that respect the application of the non-petitioner presented on Dec. 12, 1985 was within limitation.'

3. Learned Counsel for the petitioner also placed reliance of a decision in *Jangam Srinivasan Rao v. Jangam Rajeswari and Anr.*, , wherein Jagannadha Raju, J. of Andhra Pradesh High Court, has observed as follows:

'Considering the different views expressed by the various High Courts, I prefer to follow the Division Bench decision of the Calcutta High Court reported in Maddari Bin v. Sukdeo Bin, : AIR1967 Cal136 . The other decisions are judgments of Single Judges. In my humble opinion the construction put forward by the Division Bench of the Calcutta High Court is harmonesus construction and interpretation of the proviso making the proviso applicable to both the limbs of procedure contemplated under Sub-sec. 3 of Section 125, Cr.P.C. I hold on point No. 2 that the wife, me maintenance-holder cannot accumulate the maintenance for a period beyond 12 months. No application for execution of the maintenance order can be entertained for a period exceeding 12 months immediately preceding the date of application. I hold this point in favour of the petitioner. In this context, I make it clear that the remedy provided under Section 125(3), Cr.P.C. is a speedy and expeditious remedy. By virtue of the order of maintenance granted in M.C. 18/84 the right vested in the wife to receive maintenance from the date of the application i.e. 7.12.1983. She may not be able to recover the earlier arrears by resorting to an application under Sec. 125(3), Cr.P.C., but still she would certainly be entitled to claim those arrears by filing a civil suit on the basis that the amount is due to her by virtue of the Court order. But at the same time it should be remembered that under Civil law also her claim should be within the period of limitation.'

4. Per contra, Mr. J. Bhuvanesh Kumar, learned Counsel appearing for the respondent would contend, that this application for execution was filed on 20.9.1993, subsequent to the disposal of the revision in July, 1993, and so, he filed me said application within two months, and as such, the petition is maintainable. A reading of the relevant section of the Code, and the perusal of the judgments cited supra, would make it very clear, that the petition under Sec. 125(3) could be filed, claiming arrears of maintenance only for a period of one year, from the date on which it became due.

5. In this case, the order of maintenance was passed originally on the application filed on 20.5.1991, in so far as the minor child/respondent is concerned. Subsequently revision was filed by the husband, and in mat revision, maintenance awarded to the wife by the Trial Court was set aside, but the maintenance granted to the minor child was confirmed, in July 1993. Therefore, the maintenance

amount in so far as the minor child is concerned became due from the date of the order of Trial Court. In view of the reasonings given above, the order of learned Judicial Magistrate, dated 4.7.1994, suffers from infirmity.

6. It is brought to my notice that the petitioner has already paid a sum of Rs. 1,200/- towards the maintenance arrears for a period of 12 months at Rs. 100/-per month. It is open to the respondent to file separate applications in respect of the other respective periods. With this observation, the revision is allowed, setting aside the order of Court below.

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