

SHANTHA @ USHADEVI AND ANR.

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v.

B.G. SHIVANANJAPPA

MAY 6, 2005

[P. VENKATARAMA REDDI AND A.K. MATHUR, JJ.]

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*Code of Criminal Procedure, 1973:*

*Sections 125(3), 'first proviso' and 125(1)—Arrears of Maintenance—Claim for—Limitation—Trial court ordered maintenance to wife and daughter under S.125(1)—Petition filed by wife for recovery of maintenance but no payment made by husband—Instead, he filed revision in Sessions Court and then in High Court which were dismissed—Thereafter wife filed IA in the pending petition claiming, maintenance for the entire period—Challenge to, on ground of being time barred under proviso to S.125(3) CrPC—Held: IA cannot be dismissed as time-barred as the petition claiming arrears of maintenance was filed within one year from the date the amount became due and was pending althrough.*

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*Section 125—Social legislation—To be construed liberally for the welfare and benefit of wife and children.*

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Appellant-wife filed a petition under Section 125 CrPC against respondent-husband claiming maintenance for herself and her minor daughter. On 20.1.1993, trial court awarded maintenance of Rs. 500 to the appellant and Rs. 300 to daughter. Appellant filed Crl. Misc. Petition No. 47/1993 to recover the arrears of maintenance for the period 20.1.1993 to 31.8.1993. Respondent preferred revision in Sessions Court and then in High Court. During the pendency of these revisions, the respondent did not pay any amount nor the Magistrate issued the warrant in terms of Section 125(3). Sessions Court and High Court both dismissed the revisions and affirmed the order of grant of maintenance. Thereafter, on 16.6.1998, appellant filed an IA seeking recovery of an amount of Rs. 46000 for the period 20.1.1993 to 16.6.1998. Respondent paid only Rs. 5365 for a period 20.1.1999 to 31.8.1999 and took a stand that no further amount was payable as the IA filed on 16.6.1998 was time barred under the proviso to Section 125(3) CrPC. Trial Court dismissed the IA on the ground of

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**A** limitation while Sessions Court held that bar of limitation did not apply. Respondent was successful in revision before High Court. Hence the present appeal.

Allowing the appeal, the Court

**B** HELD: 1. The amount of maintenance became due by virtue of the trial Court's order passed on 20.1.1993 and in order to seek recovery of the amount due by issuance of warrant, application is to be made within a period of one year from the date the amount became due. In the present case, CrI. Misc. Petition was filed well within one year. As no amount was paid even after the disposal of the matter by the High Court, the appellant **C** filed I.A. wherein the arrears due up to that date were calculated and sought recovery of that amount under Section 125 (3). Thus, I.A. was filed even when CrI. Misc. Petition was pending and no action to issue warrant was taken in that proceeding. The fact that the additional amount was specified in the I.A. does not mean that the application for execution of **D** the order by issuing a warrant under Section 125(3) was a fresh application made for the first time. The main petition filed in the year 1993 was pending and kept alive and the filing of subsequent I.A. in 1998 was only to specify the exact amount which accrued upto that date. Such application is only supplementary or incidental to the petition already filed in 1993 admittedly within the period of limitation. The fact that only a sum of Rs. **E** 5,365/- representing the arrears of eight months was mentioned therein does not curtail the scope of CrI. Misc. Petition filed in 1993 more so when no action was taken thereon and it remained pending. [158-C, D, E, F, G]

**F** 2. In the peculiar circumstances of the case, the bar under Section 125(3) cannot be applied and the High Court has erred in reversing the order of Sessions Judge. Section 125 Cr. P.C. is a measure of social legislation and it has to be construed liberally for the welfare and benefit of the wife and daughter. It is unreasonable to insist on filing successive applications when the liability to pay the maintenance as per the order passed under Section 125(1) is a continuing liability. [158-H]

**G** CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 673 of 2005.

From the Judgment and Order dated 11.3.2004 of the Karnataka High Court in CrI.R.P.No. 753 of 2003.

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Kashi Vishweshwar, Yash Anand and R.C. Kohli for the Appellants. A

N.D.B. Raju, Guntur Prabhakar and Ms. Bharathi R. for the Respondent.

The Judgment of the Court was delivered by

**A.K. MATHUR, J.** Leave granted. B

Brief facts giving rise to this appeal are that the appellant, Shantha @ Ushadevi and Kusuma, a minor represented by her mother-guardian filed a petition under Section 125 of the Code of Criminal Procedure being Criminal Petition No.2 of 1991 before the trial Court against respondent claiming for maintenance. The said criminal petition was allowed by the trial court by its order dated January 20, 1993 awarding a sum of Rs. 500 to the appellant, the wife of the respondent and a sum of Rs. 300 to Kusuma, the daughter for maintenance. The appellant filed Criminal Miscellaneous Petition No.47 of 1993 under Section 125(3) of the Code of Criminal Procedure claiming an amount of Rs.5,365 as arrear maintenance calculated from January 20, 1993 (i.e. the date of the trial court's order granting maintenance) to August 31, 1993. Respondent filed a criminal revision before the Sessions Judge, Tumkur being CrI. Revision Petition No.35 of 1993 against the order passed by the trial court. This revision petition was dismissed by the Sessions Judge by its order dated June 26, 1997 affirming the order passed by the trial court. Thereafter, the respondent took up the matter before the High Court of Karnataka at Bangalore by filing a criminal revision petition being Cr.R.P.No.2297 of 1997 against the order passed by the Sessions Judge, Tumkur on June 26, 1997. The said revision petition was dismissed by the High Court. After the affirmation of the order by the High Court, an interim application being I.A.1 was filed in Criminal Misc. Petition No.47 of 1993 claiming arrears of maintenance for the period from January 20, 1993 i.e. the date of the trial court's order till the date of filing the I.A. 1. i.e., 16th June, 1998 for a sum of Rs. 46,000/-. The respondent deposited a sum of Rs. 5,365 towards the maintenance from January 20,1993 till August 31, 1993. However, IA-1 filed by the appellant for arrears of maintenance in CrI. Misc. Petition No.47 of 1993 claiming maintenance of Rs.46, 000/- was objected by the respondent contending that the appellant cannot claim arrears of maintenance beyond a period of one year under first proviso to Section 125(3) of the Code of Criminal Procedure being barred by limitation. The trial court by its order dated July 13, 2000 dismissed the IA-1 being barred by limitation. The appellant thereafter filed a criminal revision which came to be registered as C  
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- A** Criminal Revision Petition No.194/2000 before the learned Sessions Judge, Tumkur. The said criminal revision petition was allowed by the learned Sessions Judge by its order dated November 23, 2002 and the matter was remanded back to the trial court. Learned Sessions Judge observed that there was no need of filing a fresh petition during the pendency of the application under Section 125(3) Cr. P. C. for maintenance which has fallen due for the period post application and it is implicit in the powers of the court to make an order directing the husband to make payment of arrears of maintenance up to the decision while disposing of the application for recovery of arrears of maintenance. The learned Sessions Judge further observed that it is not required to file a fresh application which may lead to multiplicity of litigations.
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- C** Learned Sessions Judge further held that the I.A.1 filed in Criminal Misc. Petition No.47 of 1993 claiming maintenance was within limitation. Aggrieved against this order of the learned Sessions Judge, respondent filed criminal revision being CrI. R. P. No.753 of 2003 before the High Court of Karnataka at Bangalore. The High Court allowed the criminal revision and set aside the order of the learned Sessions Judge holding that the said application was barred by limitation. Aggrieved against this order of the High Court passed in Criminal Revision Petition No.753 of 2003 on March 11, 2004 the present Special Leave Petition was filed by the appellants.
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- E** It was submitted before the learned Single Judge of the High Court that under proviso to sub-section (3) of Section 125 of the Code of Criminal Procedure no warrant can be issued to levy the amount due beyond a period of one year. Therefore, the application i.e. I.A.No.1 filed in CrI. Misc. Petition No.47 of 1993 is barred by limitation. However, CrI. Misc. Petition No.47 of 1993 for recovery of the amount of arrears was allowed to the extent of Rs.5600/- for the period from January 20, 1993 to August 31, 1993 i.e. for a period of eight months. Subsequently, I.A.1 was filed on 16th June, 1998 for recovery of arrears from January 20, 1993 till the date of its filing, i.e. 16th June, 1998. This was objected to by the respondent-husband. Learned Single Judge of the High Court after considering the matter took the view that the arrears from September 1, 1993 to June 16, 1998 was barred by
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- G** limitation and therefore, reversed the judgment of the learned Sessions Judge who had opined that there was no need for the appellants to file I.A.1 during the pendency of the Criminal Miscellaneous petition No.47 of 1993 as the appellants were entitled to the arrears of maintenance right from the date the Magistrate passed the order.

- H** We have heard learned counsel for the parties and perused the records.

The facts that emerge are that by an order dated 20th January, 1993, passed by the Judicial Magistrate of Class I, Gubbi, the appellant No.1 was granted maintenance at the rate of Rs.500 per month for herself and Rs.300/- for her minor daughter. This order of grant of maintenance was affirmed by the High Court when the revision petition filed against this order was dismissed by the High Court on December 18, 1997.

In order to recover the amount, as per the order of the Judicial Magistrate, the appellant filed Crl. Misc. Petition No. 47 of 1993 on 1.9.1993 showing the arrears of maintenance for the period of eight months. During the pendency of revision petition in the Sessions Court and the High Court, the respondent did not pay any amount nor did the Magistrate issue a warrant in terms of section 125(3). After the disposal of the matter by the High Court, the appellant filed an I.A. being I.A. No. 1 in Crl. Misc. Petition No. 47 of 1993 seeking recovery of an amount of Rs. 46,700/- being arrears due after the date of filing the petition, being the arrears due from the Trial Court's Order (20th January, 1993) till the date of filing the I.A., i.e., 16th June, 1998. After the filing of the said I.A., the respondent deposited an amount of Rs. 5,365/- towards arrears due for a period of eight months, i.e., from 20th January, 1993 to 31st August, 1993. The respondent-husband took the stand that no further amount was payable as the I.A. filed on 1st July, 1998 was barred by limitation under the first proviso to Section 125(3) Cr.P.C. According to the respondent, the arrears of maintenance for the said period of eight months only were recoverable under Section 125(3), in view of the Crl. Misc. Petition No. 476 of 1993 filed on 1.9. 1993 wherein the issuance of warrant was sought for recovery of a sum of Rs. 5,365/- due for about eight months. As already noticed, the learned Magistrate dismissed I.A.1 of 1998 on the ground of limitation. However, the learned Sessions Judge having held that the bar of limitation did not apply, remitted the matter to the Trial Court for fresh disposal on a revision filed in the High Court by the husband, the present impugned order was passed allowing the revision and restoring the order of the Trial Court. To appreciate the question whether the bar of limitation under the proviso to Section 125(3) is attracted in the light of the facts of the present case, a reference to the said provision is necessary:

“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 (allowance for the maintenance or the interim maintenance and expenses of proceeding,

A 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:

B 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:

xx                    xx                    xx ”

C It is true that the amount of maintenance became due by virtue of the Magistrate's order passed on 20th January, 1993 and in order to seek recovery of the amount due by issuance of warrant, application shall be made within a period of one year from the date the amount became due. In the present case, the application, namely, Crl. Misc. Petition No. 47 of 1993 was filed well within one year. As no amount was paid even after the disposal of the matter by the High Court, the appellant filed I.A. 1 in Crl. Misc. Petition No. D 47 of 1993 wherein the arrears due up to that date were calculated and sought recovery of that amount under Section 125 (3). Thus, I.A. 1 was filed even when Crl. Misc. Petition 47 of 1993 was pending and no action to issue warrant was taken in that proceeding. Crl. Misc. Petition of 47 of 1993 which was filed within one year from the date the amount became due was kept E alive and it was pending althrough. The purpose of filing I.A. on 1st September, 1998 was only to mention the amount due upto date. The fact that the additional amount was specified in the I.A. does not mean that the application for execution of the order by issuing a warrant under Section 125(3) was a fresh application made for the first time. As already noticed, the main petition filed in the year 1993 was pending and kept alive and the filing of subsequent I.A. F in 1998 was only to specify the exact amount which accrued due upto that date. Such application is only supplementary or incidental to the petition already filed in 1993 admittedly within the period of limitation. The fact that only a sum of Rs. 5,365/- representing the arrears of eight months was mentioned therein does not curtail the scope of Crl. Misc. Petition filed in G 1993 more so when no action was taken thereon and it remained pending.

We are, therefore, of the view that in the peculiar circumstances of the case, the bar under Section 125(3) cannot be applied and the High Court has erred in reversing the order of Sessions Judge. It must be borne in mind that Section 125 Cr. P.C. is a measure of social legislation and it has to be H construed liberally for the welfare and benefit of the wife and daughter. It is

unreasonable to insist on filing successive applications when the liability to pay the maintenance as per the order passed under Section 125(1) is a continuing liability. A

For the above reasons, we set aside the impugned order of the High Court and restore the order passed by the Additional District Judge, Tumkur in CrI. R.P. No. 194 of 2000. The learned Magistrate shall take appropriate steps under Section 125 (3) in case the arrears of maintenance is not paid within three months. B

D.G.

Appeal allowed.