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POONGODI & ANR.

v.

THANGAVEL

(Criminal Appeal No. 1542 of 2013)

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SEPTEMBER 27, 2013

[SUDHANSU JYOTI MUKHOPADHAYA AND
RANJAN GOGOI, JJ.]

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CODE OF CRIMINAL PROCEDURE, 1973

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s. 125(3), first proviso – Order of High Court curtailing the entitlement of appellants to maintenance to a period of one year prior to the date of filing of application – Held: The application of appellants was in continuation of their earlier application – The provision does not create a bar nor does it in any way affect the entitlement of a claimant to arrears of maintenance – Order of High Court set aside – Respondent directed to pay the entire arrears of maintenance due to appellants and to continue to pay monthly maintenance.

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s.125(3), first proviso – Explained.

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In an application filed u/s. 125(3) CrPC by the appellants, namely, the wife and the son of the respondent, for a directions to the respondent to pay maintenance for the period 04.02.1993 to 05.02.2002, the High Court held that as the petition was filed on 05.02.2002, under the first proviso to s. 125(3) CrPC, the appellants were entitled to claim arrears for the period of one year preceding the date of filing of the application i.e. from 04.02.2001 to 05.02.2002.

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Allowing the appeal, the Court

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HELD: 1.1 The first proviso to s. 125(3) CrPC does not create a bar nor does in any way affect the entitlement

of a claimant to arrears of maintenance. What the proviso contemplates is that the procedure for recovery of maintenance u/s. 125(3) CrPC, namely, 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. [Para 4]

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1.2 The application dated 05.02.2002 filed by the appellants u/s. 125(3) was in continuation of the earlier applications and for subsequent periods of default on the part of the respondent. The first proviso to s. 125(3), therefore, did not extinguish or limit the entitlement of the appellants to the maintenance granted by the trial court. [Para 7]

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1.3 The order of the High Court is set aside and the respondent is directed to pay the entire arrears of maintenance due to the appellants commencing from the date of filing of the maintenance petition i.e. 4.2.1993 and continue to pay the monthly maintenance as directed in the judgment. If the order is not complied with by the respondent, the trial court is directed to issue a warrant for the arrest of the respondent and ensure that the same is executed and the respondent taken into custody to suffer imprisonment as provided by s. 125(3) CrPC. [Para 8]

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Kuldip Kaur v. Surinder Singh and Anr. 1988 (3) Suppl. SCR 762 = (1989) 1 SCC 405; *Shantha alias Ushadevi and Another v. B. G. Shivananjappa* 2005 (1) Suppl. SCR 153 = (2005) 4 SCC 468 – relied on.

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A *Shahada Khatoon & Ors. v. Amjad Ali & Ors. (1999) 5 SCC 672 – referred to.*

Case Law Reference:

	1988 (3) Suppl. SCR 762	relied on	para 5
B	2005 (1) Suppl. SCR 153	relied on	para 6
	(1999) 5 SCC 672	referred to	para 6

C **CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1542 of 2013.**

From the Judgment and Order dated 21.04.2004 of the High Court of Madras in Crl. R.C. No. 620 of 2003.

D **Movita, R. Nedumaran for the Appellants.**

V. Kanagaraj, Promila, S. Thananjayan for the Respondents.

The Judgment of the Court was delivered by

E **RANJAN GOGOI, J. 1. Delay condoned. Leave granted.**

2. The appellants are the wife and son of one Thangavel. By an order dated 12.01.1998 passed by the learned trial court each of the appellants have been granted maintenance @ Rs. 300/- per month w.e.f. 04.02.1993 i.e. date of filing of the application under Section 125 of the Code of Criminal Procedure (CrPC). As the respondent-husband had not complied with the order of payment, in a miscellaneous petition, i.e., C.M.P. No. 566/1998 filed by the appellant, the trial court by its order dated 21.07.1998 had sentenced the respondent to imprisonment. The default in payment of maintenance was for the period 4.2.1993 to 4.2.1998. On 5.2.2002 another miscellaneous application (Crl.M.P. No.394/2002) was filed by the appellants claiming maintenance for the period 4.2.1993 to 5.2.2002. The same was allowed by the learned Magistrate

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on 31.12.2002 against which the respondent had filed Crl. R.C. No. 620/2003. The High Court by its order dated 21.4.2004 held that as Crl.M.P. No. 394/2002 was filed on 5.2.2002, under the first proviso to Section 125(3) CrPC, the appellants were entitled to claim arrears for the period of one year preceding the date of filing of the application i.e. from 4.2.2001 to 5.2.2002. Accordingly, the High Court directed the respondent (revision petitioner before it) to pay the arrears for the aforesaid period within two months failing which it was directed that an arrest warrant would be issued against the respondent and the sentence of imprisonment earlier imposed by the learned Magistrate would come into effect. As the aforesaid order of the High Court had curtailed the entitlement of the appellants to maintenance to a period of one year prior to the date of filing of the Crl. M.P. No. 394/2002, the appellants have filed this appeal.

3. We have heard learned counsel for the parties.

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) CrPC 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) CrPC. 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) CrPC, 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.

A 5. The decision of this Court in *Kuldip Kaur v. Surinder Singh and Anr.*¹ may be usefully recalled wherein this Court has held the provision of sentencing under Section 125 (3) to be a "mode of enforcement" as distinguished from the "mode of satisfaction" of the liability which can only be by means of actual payment. Paragraph 6 of the report to the above effect, namely, B that the mode of enforcement i.e. sentencing to custody does not extinguish the liability may be extracted below:

C "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 D 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 E 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 F 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 G 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

H 1. (1989) 1 SCC 405.

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. In another decision of this Court in *Shantha alias Ushadevi and Another v. B.G. Shivananjappa*² it has been held that the liability to pay maintenance under Section 125 CrPC is in the nature of a continuing liability. The nature of the right to receive maintenance and the concomitant liability to pay was also noticed in a decision of this Court in *Shahada Khatoon & Ors. v. Amjad Ali & Ors.*³. Though in a slightly different context, the remedy to approach the court by means of successive applications under Section 125(3) CrPC highlighting the subsequent defaults in payment of maintenance was acknowledged by this Court in *Shahada Khatoon* (supra).

7. The ratio of the decisions in the aforesaid cases

2. (2005) 4 SCC 468.

3. (1999) 5 SCC 672

- A squarely apply to the present case. The application dated 05.02.2002 filed by the appellants under Section 125(3) was in continuation of the earlier applications and for subsequent periods of default on the part of the Respondent. The first proviso to Section 125(3), therefore did not extinguish or limit the entitlement of the appellants to the maintenance granted by the learned trial court, as has been held by the High Court.

8. In view of the above, we are left in no doubt that the order passed by the High Court needs to be interfered with by us which we accordingly do. The order dated 21.04.2004 of the High Court is set aside and we now issue directions to the respondent to pay the entire arrears of maintenance due to the appellants commencing from the date of filing of the Maintenance Petition (M.C.No.1/1993) i.e. 4.2.1993 within a period of six months and current maintenance commencing from the month of September, 2013 payable on or before 7th of October, 2013 and thereafter continue to pay the monthly maintenance on or before the 7th of each successive month. If the above order of this Court is not complied with by the Respondent, the learned Trial Court is directed to issue a warrant for the arrest of the respondent and ensure that the same is executed and the respondent taken into custody to suffer imprisonment as provided by Section 125(3) CrPC.

The appeal is allowed.

F R.P.

Appeal allowed.