

A.F.R.

Court No. - 84

Case :- APPLICATION U/S 482 No. - 19600 of 2020

Applicant :- Alakhram

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Virpratap Singh,Rajat Agarwal

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Yogendra Kumar Srivastava,J.

1. Heard Sri Virpratap Singh, learned counsel for the applicant and Sri Vinod Kant, learned Additional Advocate General, assisted by Sri Arvind Kumar, learned A.G.A., for the State- opposite party no.1.
2. The present application has been filed seeking to quash the order dated 18.11.2019 passed by Principal Judge, Family Court, Mahoba, as well as entire proceedings of Case No. 189 of 2019 (Smt. Uma Devi vs. Alakhram), stated to be pending before Family Court, Mahoba.
3. The aforementioned order dated 18.11.2019 has been passed upon an application (*paper no. 14 kha*) under Section 125(3) Cr.P.C. The applicant herein claims to have filed an application dated 6.1.2020 (*paper no. 17 kha*) for recall of the said order and the said application is stated to be pending.
4. Learned Additional Advocate General has raised an objection with regard to the maintainability of the present application filed under Section 482 Cr.P.C. on the ground that the order dated 18.11.2019 passed by the Family Court is in exercise of powers under Section 125(3) Cr.P.C. on account of default made by the

applicant in complying with the earlier order dated 20.10.2016 directing payment of maintenance to the opposite party no. 2, and that the applicant having already filed a recall application before the court below, and the court below being seized with the matter, it is open to the applicant to pursue the matter before the family court.

5. The admitted facts of the case are that in proceedings under Section 125 initiated upon an application moved by the opposite party no. 2 (wife), an order dated 20.10.2016 was passed, allowing the said application and directing payment of maintenance. Alleging breach of the aforesaid order, an application under Section 125(3) was moved by the opposite party no. 2, upon which the order dated 18.11.2019, has been passed.

6. In order to appreciate the controversy in the present case, the relevant statutory provisions may be adverted to.

7. Section 125 Cr.P.C. falls under Chapter IX of the Code of Criminal Procedure, 1973 and it contains provisions whereunder, an order for maintenance of wives, children and parents can be made. The object of the provisions contained under Chapter IX is to provide a speedy and effective remedy against persons, who neglect or refuse to maintain their dependant wives, children and parents.

8. The provisions contained under Section 125 Cr.P.C., as they stand today, are extracted below :-

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

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by

reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct: Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means :

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub- section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation.- For the purposes of this Chapter,-

(a) " minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875); is deemed not to have attained his majority;

(b) " wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(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 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.

Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No Wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

9. The procedure for enforcement of an order passed under Section 125 Cr.P.C. with regard to maintenance, is provided for under sub-section (3) of Section 125. A perusal of the provisions contained under Section 125(3) indicates that if any person ordered to pay monthly allowance for maintenance under Section 125(1) fails without sufficient cause to comply with the order, the Magistrate is empowered for every breach of the order to issue a warrant for levying the amount due in the manner provided for levying fines, and is further empowered to sentence such person, for the whole, or any part of each month's 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.

10. The proceedings for maintenance under Section 125 Cr.P.C. are of a summary nature and the purpose and object of the same is to provide immediate relief to the applicant. The object of the provision being to prevent vagrancy and destitution, the hardship faced by the wife in having to wait for several years before being granted maintenance, was taken note of in the Statement of Objects and Reasons of the Code of Criminal Procedure (Amendment) Act, 2001¹ [w.e.f. 24.9.2001] whereunder, the provision relating to interim maintenance allowance was introduced.

11. In terms of the Amendment Act, 2001, the word 'allowance' occurring in sub-section (3) of Section 125 Cr.P.C. has been given a wider meaning, so as to mean “allowance for the maintenance or the interim maintenance and expenses of proceeding.”

12. Section 125 of the Code of Criminal Procedure, has been enacted to achieve a social purpose with the primary object to render social justice to the woman, child and infirm parents so as to prevent destitution and vagrancy compelling those who can support those who are unable to support themselves but have a moral claim for support. It aims to provide a speedy remedy to the women, children and destitute parents who are in distress.

13. In **Shantha and Ors. vs B.G. Shivananjappa**², Section 125 Cr.P.C. has been held to be a measure of social legislation which has to be construed liberally for the welfare and benefit of the persons referred therein and the liability to pay the maintenance as per the order passed under Section 125(1) has been held to be a continuing liability.

14. The provisions contained under Section 125(3) and the first proviso thereto came up for consideration in **Poongadi and Ors. vs**

1. Amendment Act, 2001

2. (2005) 4 SCC 468

Thangavel³, and it was held that the proviso to Section 125(3) signifies that it is a mode of enforcement and does not create any bar or affects rights to claim arrears of maintenance. It lays down the procedure for recovery of maintenance by construing maintenance to be a levy of fine.

15. The liability to pay maintenance under Section 125 Cr.P.C. being in the nature of continuing liability; accordingly, in case of a default in complying with an order passed under Section 125(1) for payment of maintenance or for any breach thereof, the invocation of the exercise of power under Section 125(3) by the Magistrate, cannot be faulted with.

16. In the case at hand, in the event the applicant has made any payment in respect of arrears of maintenance, as claimed by him, and in regard to which, he has filed a recall application (*paper no. 17 kha*), it is always open to him to pursue the aforesaid application before the court below.

17. With the aforesaid observations, the present application filed under Section 482 Cr.P.C. stands dismissed.

Order Date :- 8.1.2021

Shalini

(Dr. Y.K.Srivastava,J.)

3. (2013) 10 SCC 618