

KAKB220004942014



Presented on : 20-05-2014

Registered on : 20-05-2014

Decided on : --

Duration :

**IN THE COURT OF THE PRL.CIVIL JUDGE & JMFC,
AT ALAND**

PRESENT

Sri. Yallappa Kallapur, B.A,LL.B, LL.M.,
PRL.CIVIL JUDGE & JMFC,
ALAND

DATED THIS THE 22ND DAY OF DECEMBER - 2023

CRL. MISC. NO.227/2014

PETITIONER/S:

1. Prabhavati W/o. Yashvant Ruddewadi,
Aged: 30 years, Occ: Housewife,
R/o. Badadal village, Taluka Afzalpur,
District Kalaburagi.
2. Bhagyashree D/o. Yashvant Ruddewadi,
Aged: 08 years, U/g. of her mother
Prabhavati W/o. Yashvant Ruddewadi,
Aged: 30 years, Occ: Housewife,
R/o. Badadal village, Taluka Afzalpur,
District Kalaburagi.

(By Sri. R.J. Patil, Advocate,)



//Versus//

RESPONDENT:-

Yashwant S/o. Mahadevappa Ruddewadi,
Aged: 36 years, Occ: Agriculture,
R/o. Badadal village, Taluka Afzalpur,
District Kalaburagi.

(By Sri. H.A. Biradar, Advocate,)

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ORDER

The petitioners has filed this Petition for recovery of maintenance of Rs.2,11,000/- by attaching the immovable property of the respondent.

2. The brief averments made out in the Petition Paras are that:

In the petition it is contended that the petitioners are filed petition U/Sec.125 of Cr.PC against the respondent in Civil Misc.182/2010, same was allowed on 25.02.2014 by granting maintenance of Rs.3,000/- per month to the petitioner No.1 and Rs.2,000/- to the petitioner No.2 from the



date of the petition. The petitioners are entitled to recovery the same granted maintenance from the date of petition i.e. from 12.10.2010 to 12.04.2014 for a period of 42 months X 5000/- =2,10,000/- and cost of this petition is Rs.1,000/- total Rs.2,11,000/-. The respondent is liable to pay the above maintenance of Rs.2,11,000/-. So many times this court has issued FLW and twice the police are arrested him to produce before this court then only he has paid Rs.5,000/- + Rs.5,000/- long back and on that occasion he promise to deposit the entire maintenance due to the amount on next date get released from the Court. Thereafter, so many dates of hearing was gone but, he never present before this court and the police are returning the FLW for one or other false reasons. Accordingly, prayed to allow the petition.

3. After institution of the Petition, notice was issued to the Respondent. In response to the notice, the respondent appeared through his counsel and paying the balance irregular. Hence, learned counsels for the petitioner filed this



application to attach the immovable property of the respondent to recover the maintenance. Neither respondent present before the court nor filed the objections to the petition. Hence, objections to the petition taken as nil.

4. Heard the Advocate for the Petitioner.
5. After perusing the materials available on record the following Points arose for my determination :

POINTS

1. Whether the petitioners are entitled for recovery of maintenance from the respondent as sought by attachment of immovable property?
2. What Order?
6. My findings to the above Points are as under :

POINT NO.1 : In the Affirmative,

POINT NO.2 : As per final order,

For the following:

REASONS

7. **POINT NO.1**: - The learned counsel for the petitioner argued that, in Criminal Misc.No.182/2010 disposed by this



Court by allowing the petition on 25.02.2014 granting maintenance of Rs.3,000/- per month to the petitioner No.1 and Rs.2,000/- per month to the petitioner No.2 from the date of petition. Further argued that, the respondent has to pay the maintenance from the date of petition i.e. from 12.10.2010 to 12.04.2014, for the period of 42 months amount of Rs.2,10,000/- and cost of this petition is Rs.1,000/- total Rs.2,11,000/-

8. Perused the entire documents and order sheet. As per the provision of law, contemplated under Section 128 of Cr.PC, the petitioner is at liberty to recover the due maintenance amount by filing the petition under the said provision. The petition under Section 125 of Cr.PC is Quasi Civil and criminal in nature, the petitioner is at liberty to recover the due amount by filing the petition or prayed for kept the respondent in the Civil Prison. To clarify the point whether the petitioners are entitled for recovery of maintenance more than twelve months, this court is relied



upon the following Judgment, *in the case of P. Vaithi V/s. Kanagavalli and Another*, reported in **2010 SCC OnLine Mad 920**, wherein it is held that;

“ At the outset, I have to state that a proceeding under Section 125 Cr.P.C. is quasi civil and quasi criminal. In so far as it decides the civil rights of the parties to claim maintenance, it is civil in nature. When the order is not obeyed by the person against whom the same has been made, then the court is empowered to impose a punishment of imprisonment of one month for each breach. To that extent, the proceeding is criminal. To put it comprehensively, I have to state that the proceeding is quasi civil and quasi criminal.

After an order is passed directing to pay maintenance, the party in whose favour such an order has been passed has got two options to work out to recover the arrears from the other. He can choose to approach the court under Section 125(3) Cr.P.C. requesting the court to punish the defaulter by imposing appropriate imprisonment. On the other hand, he can also approach the court under Section 128 of Cr.P.C. seeking to recover the amount due under the maintenance order. A comparison of Sections 125(3) and 128 of Cr.P.C. would keep things beyond any pale of doubt that in so far as the proceeding under Section 125(3) is concerned, the statute has prescribed a period of limitation of one year, whereas in respect of a proceeding under Section 128 of Cr.P.C., there is no limitation provided at all. This is because, while exercising the power under Section 125(3) Cr.P.C. the action being essentially acriminal in nature, resulting in punishment of imprisonment, the legislature has perhaps, thought it fit to provide such a period of limitation of one year to file a petition. Since, while



enforcing an order under Section 128 of Cr.P.C. for recovery of the amount, there is no question of straight away imposing such a punishment of imprisonment and that may be the reason for the legislature not to provide for such a period of limitation. Therefore, to put it in nutshell, for initiating a proceeding for enforcing an order by invoking Section 128 of Cr.P.C., absolutely, I find no provision providing for limitation as it is provided in respect of proceedings under Section 125 (3) of Cr.P.C. In the case on hand, the petition was filed under Section 128 of Cr.P.C. Though it was filed beyond one year, in my considered opinion, the lower court was right in entertaining the same as the same is not barred by any limitation.

Now the judgment relied on by the learned counsel for the petitioner in Yoosuf Rawther v. Ashref and another reported in 1997 CrI.L.J.4313 as cited supra requires to be considered. In that judgment, the Court had occasion to consider the period of limitation provided only in respect of a petition filed under Section 125(3) of Cr.P.C. The Court was not inclined to give any findings in respect of the proceedings under Section 128 Cr.P.C. Therefore, the views expressed in the said judgment have no relevance to the Section 128 of Cr.P.C. at all. For similar reason, the judgment in Jagannath Patra v. Purnamashi Saraf and another reported in AIR 1968 Orissa 35 also does not come to the help of the petitioner.

In view of all the above, the revision fails and the same is accordingly dismissed. Consequently, connected Miscellaneous Petition is also closed. I clarify that the petitioner is at liberty to enforce the maintenance order without being bound by the limitation provided under Section 125(3) of Cr.P.C.”



After careful reading of the above cited Judgment, it is very much clear that, the limitation of 12 months is only applicable while exercising power under Section 125 (3) of Cr.PC the action being essential a criminal in nature resulting in punishment of imprisonment but not the petition filed under Section 128 of Cr.PC and the petitioner is at liberty to recover due amount even exceeding 12 months as stated by the Hon'ble Apex Court. Case in hand, the petitioner sought the relief of recovery of due maintenance up to 42 months it amounts Rs.2,11,000/-. Perused the entire records. The respondent has paid Rs.10,000/- till today. It is necessary to allow this application to fruitful the order. Hence, I answer Point No.1 In the Affirmative.

9. **POINT NO.2:** - In the result, I proceed to pass the following:

ORDER

Application filed by the petitioner
for attachment of immovable property
of the respondent is hereby allowed.



Office is hereby directed to issue
attachment warrant if PF paid.

((Dictated to the Stenographer on Computer directly, typed by him, Order corrected and signed by me, then pronounced by me in the Open Court on this the 22nd day of December -2023).

(YALLAPPA KALLAPUR)
PRL.CIVIL JUDGE & JMFC,
ALAND

Dictated on :22-12-2023.
Checked on :22-12-2023.
Signed on :22-12-2023.

(YALLAPPA KALLAPUR)
PRL.CIVIL JUDGE & JMFC,
ALAND

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