

**ORDER ON MAINTAINABILITY**

- 1.** The petitioners have filed the present petition U/s.128 of Cr.P.C seeking recovery of arrears of maintenance payable from 12.06.2023 to 12.12.2024 for an amount of Rs.72,000/- from Respondent.
  
- 2.** In the application it is stated that, the petitioners had filed a petition U/s.12 of Protection of Women from Domestic Violence Act, 2005, which came to be allowed and respondent is directed to pay maintenance at the rate of Rs.3,000/-p.m. to petitioner No.1 and Rs.1,000/- p.m. to petitioner No.2 vide order dated 08.02.2023. However, the respondent has failed to file maintenance as per the said order from 12.06.2023 to 12.12.2024 i.e. an amount of Rs.72,000/-. Since petitioners are leading miserable life and or completely dependent upon the amount of maintenance as the only source of livelihood, the petitioners were constrained to file the present petition.

- 3.** On the other hand it is the specific contention and objection of the respondent that the petition is not filed within 12 months as provided U/s.125(3) of Cr.P.C. In fact the petitioners are claiming arrears of maintenance for 18 months. Therefore, the present petition is not maintainable and deserves to be dismissed as it is filed beyond the period of 12 months.
- 4.** Heard, perused.
- 5.** The records reveal that petitioners had filed Cri.Misc No.50/2019 against respondent U/s.12 of Protection of Women from Domestic Violence Act, 2005, which came to be allowed and respondent is directed to pay maintenance at the rate of Rs.3,000/-p.m. to petitioner No.1 and Rs.1,000/- p.m. to petitioner No.2 vide order dated 08.02.2023. However, this fact is not denied by the respondent. It is the only contention of the respondent that, the petition is not filed within 12 months as provided U/s.125(3) of Cr.P.C. In fact the petitioners are claiming arrears of maintenance for 18 months. Therefore, the

present petition is not maintainable and deserves to be dismissed as it is filed beyond the period of 12 months.

6. This line of argument of counsel for Respondent holds no water, since the duty of payment of maintenance is continuous obligation upon the respondent and does not extinguish the right of the petitioners for recovery of arrears of maintenance if not claimed by petitioners. In this regard I would like to rely upon decision of Hon'ble Supreme Court of India in **Shantha v. B.G. Shivananjappa, (2005)**

**4 SCC 468, wherein it is held as follows;**

**A.** Criminal Procedure Code, 1973 S. 125(3) first proviso Limitation of one year to seek recovery of arrears of maintenance Applicability to the interim application filed in the main petition Appellant wife and her daughter granted maintenance amounting to Rs 500 and Rs 300 respectively, by the Magistrate on 20-1-1993 Since the amount was not paid and no warrant issued by the Magistrate, appellant wife filing petition claiming Rs 5365 as arrears of maintenance from 20-1- 1993 to 31-8-1993 (date of filing the petition) Respondent husband's c revision against the order of the trial court dismissed by the Sessions Judge as well as the High Court He failing to pay the amount due. Thereafter, appellant wife filing interim application in the main petition

claiming arrears of maintenance amounting to Rs 46,000 from 20-1-1993 to 16-6-1998 (date of filing the IA) Respondent depositing Rs 5365 but objecting to further claim on ground that the interim application filed on 16-6-1998 was barred by limitation under first proviso to S. 125(3).

Held, the main petition filed in 1993 was pending and kept alive and the subsequent IA was filed only to specify the exact amount accrued up to that date. Such application was only supplementary or incidental to the main petition which was admittedly filed within the period of limitation. Hence bar under S. 125(3) first proviso not applicable to the IA.

**Further held, insisting on filing successive applications is unreasonable since liability to pay maintenance is a continuing liability**

**B.** Interpretation of Statutes Particular statutes or provisions Social welfare legislation S. 125 CrPC-, **held, is a measure of social legislation and is to be construed liberally for the welfare and benefit of the wife and the children**

**(emphasis supplied)**

7. In another decision between **Poongodi v. Thangavel, (2013) 10 SCC 618**, it is held as follows;

Criminal Procedure Code, 1973- S. 125(3) and first proviso thereto - Time-limit under said first proviso for invoking S. 125(3) Whether creates any bar or affects right to claim arrears of maintenance Mode of enforcement of payment of maintenance distinguished from - entitlement to payment of maintenance

Held, said **first proviso to S. 125(3) does not extinguish or limit entitlement to arrears of maintenance - This proviso lays down procedure for recovery of maintenance by construing maintenance to be a levy of fine In case of default in payment of maintenance, claimant cannot seek detention of defaulter in custody if application therefor is not moved within one year from due date -**

Appellant wife filed application along with her minor son under S. 125 against respondent husband Trial court awarded maintenance of Rs 300 p.m. As there was default for period - between 4-2-1993 to 4-2-1998, respondent husband was detained in custody Thereafter appellant wife submitted one more application for maintenance for period 4-2-1993 to 5-2-2002 Trial court allowed this petition In appeal, High Court observed that appellant wife was entitled to only one year's arrears Unsustainability of-

Held, **as first proviso to S. 125(3) does not create any bar nor fetter on claiming arrears of maintenance, appellant wife entitled to claim arrears maintenance** Hence, order passed by High Court set aside - Respondent husband directed to pay entire arrears of maintenance due from 4-2-1993 within six months, and to pay current maintenance amount and also monthly maintenance before 7th of every month -Trial court directed to issue arrest warrant and take him into custody to suffer imprisonment if respondent husband failed to comply therewith.

**(emphasis supplied)**

8. On careful perusal of these decisions, it is clearly forthcoming that, the objections of respondent holds no water and deserves to be overruled. Hence, I proceed to pass the following:

**ORDER**

**The objections of the Respondent with respect to limitation is OVERRULED and it is held that the petition is maintainable in the present form.**

**Sd/-  
(Tejaswini Sogalad)  
Civil Judge & JMFC,  
Dandeli.**