

MHKO140007632021



CRIMINAL M.A. NO.132/2021

**Shital Vasant Sawant
V/s.
Vasant Hanmant Sawant**

**ORDER BELOW EXH.20
(Passed on 06/06/2024)**

1. This is an application filed by respondent under section 125, 127 of the Code of Criminal Procedure for dismissal of main petition and in alternative it is prayed to frame preliminary issue on the point, as to whether the applicant no.2 is entitle to claim the amount of maintenance as prayed for.
2. It is submitted that, the present petition is filed by applicant for the recovery of maintenance amount. The respondent has filed written statement and raised objection. The present execution petition is not tenable and liable to be dismissed. It is submitted that respondent is honest in leading happy marital life with the applicant no.1. The respondent has not committed any wrong and he has provided maintenance to fulfill the requirements of the applicants. Applicant no.2 has taken education up to B.E. Degree in Computer Engineering in the reputed institution. She is well educated. The respondent has spent the entire expenditure of her education and taken more efforts to build up the educational career of the applicant no.2. Presently applicant no.2 is employed and earning handsome salary. She is getting all the benefits and allowances. She has attend majority. She is capable to maintain herself. She is earning her own income and not depending on the

respondent and applicant no.1. In such circumstances she is not entitle for the claim of amount of maintenance. Hence, it is to be consider as to whether the applicant no.2 is entitle for the relief of maintenance amount or not. It is submitted that, preliminary issue needs to be framed and appropriate order shall be passed.

3. The learned advocate for applicant filed written say and opposed the application. It is submitted that, the contentions of the present application are false. The applicants have filed present execution petition for recovery of maintenance amount granted in Criminal M.A. No.70/2007 and Criminal M.A.No.10/2001. The respondent is not entitle to file the present application in the execution proceeding. The present application is not maintainable. Earlier order of maintenance is not canceled or modified. It is submitted that Judgment or order cannot be changed in the execution proceeding. Therefore, It is submitted to reject the application.

REASONS

4. Perused the record. Heard learned advocate for both side. It is matter of record that present execution petition is filed to recover the maintenance amount granted in Criminal M.A. No.70/2007 and Criminal Revision application No.23/2010. By way of present application the respondents raised objection on the ground that, the applicant no.2 is well educated, she is earning for herself and therefore she is not entitle for the relief of entitle. The learned advocate Shri. V. G. Desai for respondent argued that they have raised the objection under section 127 of the Code of Criminal Procedure and as per said provision order granting maintenance can be canceled or modified. He further argued that, it is admitted fact and

matter of record that, the applicant no.2 attained majority and therefore she is not entitle for relief of maintenance henceforth. The learned advocate for respondent relied on **Badri Narain V/s. Laxmi Gehlot (2002 Cri. L.J.1976)**. I have gone through the aforesaid authority. *In that case the applicant filed application u/sec.125 C.r.P.C. and that application was partly allowed. The Hon'ble High Court held that, sec.125 C.r.P.C. requires as a sine qua non for it's application, neglect by the husband. But if the wife leaves of her own the husbands home, she cannot claim maintenance from her husband. It is also held that, the daughter of respondent aged about 12 years when the order was passed and now she become major. Therefore, there is no question for granting maintenance.* The ld. advocate for respondent is also relied on **SK. Abubakkar V/s. Ohidunnessa Bibi (1992 Cri. L.J. 2826)**. In this case The Hon'ble Calcutta High Court held that, *child on attaining majority is not entitle for maintenance from his father u/sec.125. The right of child to realise maintenance by execution of the maintenance order passed u/sec.125 Cr. P.C. is subject to a law of limitation.*

5. In the present matter at this stage the question for consideration is that whether the respondent can raise objection as to tenability of petition u/sec.127 of Cr. P.C. In aforesaid authority no such issue was involved. Therefore, with respect I am of the view that, the aforesaid authorities are not applicable in favour of respondent at this stage. The learned advocate for respondent also filed on record order of Hon'ble Family Court, Belgaon passed in O.S. No.30/2021 between present parties. It appears that in the said proceeding interim proceeding is granted u/sec.24 of the Hindu Marriage Act,1955 in favour of applicant no.1 and it is held that, the applicant

no.2 is not entitle for any compensation. However, aforesaid proceeding is present and non-applicant u/sec.24 of the Hindu Marriage Act.

6. On the contrary the learned advocate Smt. C. S. Patil for the applicant argued that the executing Court cannot go beyond the decree. The ld. advocate relied on **Kapur Chand V/s. Satya Devi {LAWS(HPH)2022 6 63}** *In this case the applicant filed application for execution of order of maintenance. In the said execution petition the respondent filed reply and objection u/sec.127 of Cr.P.C. for cancellation of order granting maintenance and enhance of maintenance. The Hon'ble High Court of Himachal Pradesh held that, the Judicial Magistrate First Class in execution proceeding acting as executing Court and executing Court cannot go beyond the decree or order sought to be executed in execution petition. Executing Court has no jurisdiction to alter, vary, modify or cancel the order sought to be executed. Therefore, objection filed in execution petition with prayer to cancel the award of maintenance and enhancement thereof is not maintainable. Petitioner has to avail legal remedy available to him to file an appropriate petition for alteration, variation and modification of the order.*
7. The ld. advocate for applicant also relied on **Dattatraya Bhaurao Manekar V/s. Anupreeta Dattatraya Manekar, (Cri. Writ Petition No.469/2022)**. In this case the applicant had filed application for enhancement of the maintenance amount u/sec.127 of Cr.P.C. and the application was allowed by the Trial Court. The said order was challenged on the ground that the applicant no.2 and 3 have attained the majority. In this case the respondent was ready to take

responsibility of their major daughters till the marriage. But in the present matter the issue involved is different i.e. as to the tenability of execution petition. Hence, with respect I am of the view that, aforesaid authority is not applicable in favour of applicant. The ld. advocate also relied on **Poogodi And Anr. V/s. Thangavel {LAWS (SC) 2013 9 84}**. In this case The Hon'ble Supreme Court held that, the liability to pay maintenance u/sec.125 Cr. P.C. is in the nature of a continuing liability.

8. As discussed above the present application is filed u/sec.127 of Cr. P.C for cancellation of order of maintenance in respect of applicant no.2. Sec.127 of Cr. P.C. provides that on proof of a change in the circumstances of any person, receiving u/sec.125 a monthly allowance for the maintenance or interim maintenance, the magistrate may make such alteration, as he things feet, in the allowance for the maintenance or the interim maintenance. It is true that as per section 127 order of maintenance can be altered or modified. But for that purpose the respondent has to show the change in circumstances. I am of the view that, in the execution proceeding earlier order of maintenance cannot be canceled. The respondent has to initiate separate proceeding and has to establish the change in circumstances by adducing evidence. Moreover, as per guidelines issued by Hon'ble High Court of Himachal Pradesh in **Kapur Chand V/s. Satya Devi**, executing Court cannot go beyond the decree or order. Present petition is filed for the execution of order of maintenance passed in Criminal M.A. No.10/2001, 70/2007. It appears that, said order is not canceled or reversed in the appeal. Therefore, I am of the view that objection raised by the respondent is not tenable in the

present execution proceeding. However, he is at liberty to avail legal remedy available under appropriate provision of law. The respondent has also raised issue of limitation but no explanation is given as to how the present matter is not within limitation. Mere contention that, the matter is not within limitation, is not sufficient. In view of guidelines of The Hon'ble Supreme Court, in Poogodi And Anr. V/s.Thangavel, liability to pay maintenance u/sec.125 Cr.P.C. is in the nature of continuing liability. Thus, in view of aforesaid discussion the application filed by respondent is liable to be rejected.

ORDER

1. Application is rejected.

**Place:- Chandgad.
Date:- 06/06/2024.**

**(Waman D. Jadhav)
Judicial Magistrate First Class,
Chandgad..**