

MHRG090004912020



Cri MA NO.158/20220  
Anjum Halde vs Sajid Halde

**COMMON ORDER BELOW EXH 42,44,45 and 49  
( Passed on 10.01.2025)**

The applicant moved an application seeking recovery of maintenance arrears vide Exh.42, 44 and 49 and the respondent moved an application below Exh.45 for dismissal.

02. The learned advocate for respondent submitted that the primary/main application filed by the applicant seeking recovery of an amount of Rs.60,000/-. However, the respondent has already paid Rs.6,68,000/-, which exceeds the claimed amount of Rs.60,000/-. It is further submitted that the applicant must file separate applications for the recovery of arrears of maintainance pertaining to each year. Consolidating recovery claims for multiple years in a single application is impermissible. In light of the above, the Criminal Miscellaneous Application filed by the applicant is without merit and is liable to be dismissed.

03. It is further argued by the learned advocate for the respondent that the original application is filed under section 125(3) of Code of Criminal Procedure. It is further argued that there is no provision for continuous recovery in the same application. Therefore the way the applicant has recovered the arrears is illegal and not according to law.

04. To determine the legality of the application, it is essential to review the entire proceedings dating back to 2020. Upon examining the records, it is observed that the main application was filed based on the

judgment in Criminal Miscellaneous Application No.61/2016, under Section 125(3) of the Code of Criminal Procedure, seeking recovery of Rs.60,000/- as rent arrears, Rs.10,000/- as compensation, and Rs.2,000/- as application fees. After deducting the amount already received from the respondent, the applicant filed the present recovery application for Rs.60,000/- on 10.11.2020.

05. As per the procedural requirements, recovery under Section 125(3) Cr PC must be initiated and completed within one year. Therefore, it is imperative to ascertain whether the recovery proceedings were initiated and concluded within the stipulated one-year period.

06. Following the filing of the application on 10.11.2020, the applicant submitted several subsequent applications. Notably, the applicant first received an amount of Rs.20,000/- on 28.10.2021, with directions from my learned predecessor to deposit the remaining arrears by the next hearing date, i.e.10.11.2021. On that date, the respondent paid an additional Rs.50,000/- to the applicant.

07. As per procedural norms, the application should have been disposed of on 10.11.2021. However, on the same date i.e.10.11.2021, the applicant filed a further application seeking recovery of arrears Rs.2,28,000/-.The learned advocate for the respondent submitted a response to this application on the same day. It is pertinent to note that neither the respondent nor their learned advocate raised any objections regarding the date or maintainability of this subsequent application at that time.

08. The applicant has failed to substantiate how the respondent is liable to pay the claimed arrears of Rs.2,28,000/-. Despite this, the respondent,

on their own accord and without raising any objections, deposited Rs. 30,000/- on 23.11.2021 vide (Exh.22) thereby reducing the outstanding amount to Rs.1,98,000/- (Rs.2,28,000/- -Rs.30,000/-). Subsequently, on 07.12.2021, vide (Exh.26) the respondent again voluntarily paid Rs.1,00,000/- to the applicant, further reducing the outstanding amount to Rs.98,000/-(Rs.1,98,000/-- Rs.1,00,000/-). On 11.03.2022, the respondent appeared with their advocate and voluntarily paid an additional amount of Rs.24,000/-vide (Exh.28) reducing the balance to Rs.74,000/- (Rs.98,000/- - Rs.24,000/-). Finally, on 30.03.2022, the respondent once again appeared with their advocate and paid Rs.12,000/-vide (Exh.29) to the applicant, leaving an outstanding amount of Rs.62,000/- (Rs.74,000/- - Rs.12,000/-).

09. Upon reviewing the records, it is observed that as of 10.11.2021, the respondent was not liable to pay Rs.2,28,000/-, as claimed by the applicant. Instead, the applicant should have filed an application for the recovery of arrears Rs.1,44,000/-.Notably, the respondent did not raise any objections when the applicant moved an application for the recovery of Rs.2,28,000/-. On the contrary, the respondent, accompanied by their advocate, made payments towards the claimed amount. For the period from 10.11.2021 to 10.11.2022, the applicant was entitled to receive a maintenance amount of Rs.1,44,000/-. During this period, the respondent deposited a total of Rs.1,36,000/-. It is thus evident that the applicant is entitled to receive an outstanding amount of Rs.8,000/- for the year 10.11.2021 - 10.11.2022.

10. The respondent ought to have raised objections on the same date when the applicant failed to file a separate application for each year recovery. However, instead of raising such objections, the respondent continued to pay the maintenance amount. The respondent contends that

the applicant has already recovered arrears amounting to Rs.6,08,000/-. However, this assertion has not been substantiated in the proceedings of this application. Furthermore, this Court is unable to comprehend the basis on which the applicant filed the application for recovery of arrears amounting to Rs.5,60,000/- vide Exhibit 44.

11. Both parties have failed to provide a proper bifurcation or detailed account of the arrears. This Court observes that the allegations regarding the recovery of arrears are merely oral and lack evidentiary support. Neither party has produced records showing the exact amount received by the applicant or the amount to which she is legally entitled. It is incumbent upon both parties to furnish this Court with accurate and detailed information regarding the arrears claimed and received. Instead of doing so, the arguments presented have been confined to the issue of limitation and for separate application for the recovery of arrears.

12. On 10.11.2023, the respondent filed an application seeking the dismissal of the main application, alleging it to be illegal. The respondent argued that the applicant cannot file continuous recovery claims under the same application and is required to file separate applications for each recovery period.

13. The learned advocate for the applicant moved ruling reported in **[AIR 2005 SUPREME COURT 2410] Shantha@Ushadevi &Anr vs B.G.Shivananjappa** wherein Hon'ble court observed that " Section 125 Crpc is a measure of social legislation and it has to be construed liberally for the welfare and benefit of the wife and daughter. It is unreasonable to insist on following successive applications when the liability to pay the maintenance as per the order passed under section 125(1) is a continuing liability.

14. On the contrary the respondent has filed order of Hon'ble Rajasthan High Court in **S.B.Criminal Misc.(Pet) NO.5001/2019 Hemant Sharma vs Pooja Sharma** wherein the Hon'ble High Court quashed the order passed by Hon'ble family court for the recovery of the arrears as the same is barred by the limitation.

15. I have gone through the ruling filed by both the parties. It is pertinent to note that the applicant initially filed an application on 10.11.2020 for the recovery of Rs. 60,000/-, which was fully satisfied on 10.11.2021. However on the same date, the applicant, within the present application, vide Exh.19 filed another application seeking recovery of Rs. 2,28,000/-. However, this application should have been filed for Rs.1,44,000/-. Despite this discrepancy, the respondent did not raise any objections, and the proceedings continued accordingly.

16. During the relevant period, the respondent paid a total of Rs.1,36,000/-, leaving an outstanding arrears of Rs.8,000/- for the recovery period from 10.11.2021 to 10.11.2022. Since then, the applicant has filed various other applications, all of which have been duly decided. On 10.11.2023, the respondent filed an application seeking dismissal of the main application, to which the applicant has submitted a response. Simultaneously, the applicant filed another application for recovery, marked as Exhibit 49. The applicant has consistently pursued recovery by filing applications within the same proceedings. However, the respondent has not paid the arrears due since 2022.

17 As per section 125(3) of Code of Criminal Procedure the applicant cannot seek arrest warrant for the recovery of arrears which is for more than one year. However as observed by Hon'ble Supreme Court that, the Section 125 Crpc is a measure of social legislation and it has to be

construed liberally for the welfare and benefit of the wife and daughter. It is unreasonable to insist on following successive applications when the liability to pay the maintenance as per the order passed under section 125(1) is a continuing liability.

18. The respondent did not raise any objections on 10.11.2021 or during the year 2022 while making payments towards interim maintenance. The recovery of arrears for the year 2021-2022 remains incomplete and is ongoing. The applicant is entitled to recover the arrears for the years 2022 - 2023 and 2023 - 2024, for which the applicant has filed applications within the same proceedings.

19. It is observed that the applicant is permitted to file an application for the recovery of arrears if the arrears are not cleared within the prescribed one year. If the respondent had paid the outstanding arrears of maintenance by 10.11.2022, only then could the respondent have validly argued that a continuing application for recovery is not maintainable.

20. Therefore the respondent is directed to pay arrears of Rs.8000/- for the year 10.11.2021 to 10.11.2022. Again the arrears which are continuing in nature i.e from 10.11.2022 to 10.11.2023 i.e 1,44,000+ 10.11.2023 to 10.11.2024 =Rs.144,000/- and arrears of Rs.8000 = (Rs.8,000/- + Rs.1,44,000/- + Rs.1,44,000/- = 2,96,000/-) within Sixty days from the date of this order. The applicant further directed to filed separate Criminal Miscellaneous application for the recovery of arrears from 10.11.2024 to 10.11.2025 for smooth proceedings of the application. If the respondent is not deposited the arrears within 60 days then the applicant is at liberty to seek the maintenance in the same application. However as per the settled legal position the applicant cannot seek arrest warrant against the respondent for the recovery of arrears. Hence I pass

following order:

**ORDER**

01. The respondent is hereby directed to pay the outstanding arrears of Rs.8,000/- for the year 10.11.2021-2022, along with the arrears continuing from 10.11.2022 to 10.11.2023, amounting to Rs.1,44,000/- and 10.11.2023 to 10.11.2024 Rs.1,44,000/-. The total sum of Rs.2,96,000/- shall be paid within sixty (60) days from the date of this order.

02. The applicant is further directed to file a separate Criminal Miscellaneous Application for the recovery of arrears for the period from 10.11.2024 to 10.11.2025 to ensure the smooth conduct of proceedings.

03. In the event that the respondent fails to deposit the specified amount within the stipulated 60 days, the applicant shall be at liberty to seek recovery of arrears of maintenance through the present application.

Date:10.01.2025

Place: Roha

(Megha C. Hasge)  
Judicial Magistrate First Class  
Roha Dist.Raigad