

MC Case no. 89 of 2024 (CIS 05/2024)

JD Code- WB 01110

Order no.11

Dated: 09.09.2025

Today is fixed for passing order relating to the point of limitation as raised by the opposite party as well as maintainability of the instant case.

Both parties filed hazira. Now the record is taken up for passing order.

The case is filed u/s 128 of Code of Criminal Procedure by which the petitioner prayed for enforcement of order of maintenance which was ordered vide order no. 16 dated 16.06.2014.

It is admitted by the petitioner that one adjustment of claim of Rs. 5,50,696/- (Rupees Five Lakhs fifty thousand six hundred and ninety six only) was made in execution case being no. Misc. Execution Case no. 20 of 2021. It is also admitted that a payment of Rs. 40,000/-(Rupees Forty thousand only) was made on 02.03.2022.

By filing the instant petition u/s 128, the plaintiff prayed for enforcement of the order so passed by this court vide order no. 16 dated 16.06.2014, which became due from the month of April, 2022 till December, 2024 to the tune of Rs. 3,96,000/-(Rupees Three lakhs six thousand only). On 07.03.2025 the opposite party filed a written objection inter alia claiming that execution is barred by limitation.

The other ground also raised by the opposite party is that petitioner no.01 already used a sum of Rs. 2,75,000/-(Two lakhs seventy thousand only) from the joint account of the opposite party. It is further claimed that petitioner no.01 has started earning and that she is independent and is residing at Siliguri.

During hearing, however, the Ld. Advocate for the opposite party raised the ground of maintainability in view of prescribed limitation under Section 125(3) of the Code of Criminal Procedure.

On the other hand the Ld. Advocate for the petitioner cited the decisions of the Hon'ble High Court and Hon'ble Supreme Court wherein the interpretation of Section 125(3) of Code of Criminal Procedure and 128 of Code of Criminal Procedure has been cited. The Ld. Advocate for the petitioner referred the decision of **Smt. Kuldip Kaur V. Surinder Singh & Anr. reported in AIR 1989 Supreme Court 232, Poongadi and Anr. V. Thangavel reported in AIR 2013 (10) SCC 618 and Mohammad Usman Alias Bhai Lal V. State of U.P and 6 others reported in 2021 SCC Online All 640.**

Considered.

Adhering the pronouncement of the Hon'ble Apex Court and Hon'ble High Court as referred by the Ld. Advocate for the petitioner, it is clear that scope of Section 125(3) and 128 of the Code of Criminal Procedure are different and the first proviso to Section 125(3) creates a prohibition on issuance of warrant for recovery under Section 125(3) and said period of limitation of 1 year cannot be held to create a manacle on a right to claim enforcement under Section 128.

Therefore, the proceeding for enforcement of order under Section 128 cannot be assailed on the ground that the same is barred by limitation provided under the proviso to Section 125(3).

The petitioner in this instant case has filed the petition under Section 128 of Code of Criminal Procedure. And hence, it is well maintainable.

Hence, it is

ORDERED

that the objection raised by the opposite party regarding the maintainability u/s 128 of Code of Criminal Procedure is **Rejected**. Opposite party is directed to pay the arrear allowance of maintenance as claimed by the petitioner within **15.10.2025** without any fail.

Dictated and corrected by me,

*Chief Judicial Magistrate,
Kalimpong*

CJM, Kalimpong