

In the Court of Judicial Magistrate, Tehatta, Nadia

Present : Bedashruti Mallik, WBJS

Misc Exn Case No. 165 of 2023

Order Dated: 27.11.2024

Today is the date fixed for order after hearing on ground of maintainability.

Hazira for the parties are filed.

Now the case record is taken for passing of order.

The Ld. Advocate on behalf of the OP submits that the instant case is filed by the petitioner in reference to MR Case No. 190 of 2012 praying for realisation of the maintenance amount U/S. 128, CrPC. However, since the claim is being made after a gap of 10 long years after the order was passed by this Court on 29.04.2013, the petitioner is no longer in a position to make the claim for the given period, as the claim has become time barred. On the above premises, the Ld. Advocate for the OP prays for dismissal of the instant execution case.

The Ld Advocate on behalf of the petitioner submits that the claim is made U/S. 128, CrPC is thus very much maintainable in the eyes of law.

At the very onset, let us consider that S.125(3), CrPC states that the claim beyond a period of 12 months is not barred. The provision of the said section states that if a claim is made for the period beyond one year then no warrant shall be issued for recovery of that part of the claim due which has been made beyond one year. This is because sentencing a person to jail as per terms of Sections 125(3) of the Code is a 'mode of enforcement' and not 'mode of satisfaction' of the liability, which can be satisfied only by making actual payment of the arrears. The same view has been reiterated by the Hon'ble Apex Court in the case of **Shantha alias Ushadevi and Another v. B.G. Shivananjappa [(2005)4 SCC 468]** and subsequently in the case of **Poongadi And Anr vs Thangavel [(2013)10 SCC 618]**. Such an execution order can be implemented by passing an order of distress warrant against the OP for realization of outstanding dues of maintenance only for the period preceding one year of the filing of the main maintenance case. The Ld. Advocate of the OP also harped on this point by giving the aforementioned ruling.

However, this does not mean that after such limitation period, the petitioner cannot enforce the maintenance order. In **Poongadi And Anr vs Thangavel** the Hon'ble Apex Court ruled that proceedings for the enforcement of order U/S. 128, CrPC can't be challenged on the ground that it is barred by limitation U/S. 125(3), CrPC. A plain reading of the first proviso to S.125(3), CrPC reveals that the limitation of making an application within a period of one year from the date on which it becomes due would only be applicable in case of issuance of a warrant for realisation of ant dues under the section, and it does not contain any restriction on a claim to be made for enforcing the order of maintenance for which the provision is made under S.128, CrPC. The limitation of one year provided in terms thereof would have to be read in relation to issuance of a warrant of recovery of an amount due in terms of an order of maintenance passed under S.125(1). This stand was also taken by Hon'ble High Court of Karnataka in **Venkatesh M vs. Smt. Yellamma** as cited above. Recently, Hon'ble High Court of Allahabad in **Mohammad Usman @ Bhai Lal vs State of UP [Application U/s. 482 No. 8718 of 2021]** held that the proceeding for the enforcement of the order under S.128, CrPC cannot be assailed on the ground that the same would be barred by limitation as provided under the proviso to S.125(3), CrPC.

In the above premises, this Court is of the opinion that the submission of the Ld. Advocate for the OP is misconceived, as the prayer of the Ld. Advocate of the petitioner for enforcing the maintenance order U/S. 128, CrPC is well maintainable.

The Ld. Advocate on behalf of the OP further contends that both the daughters of the petitioner are now married elsewhere and hence they are not entitled to any maintenance. This Court has no scope to consider the submission of the OP in the instant execution case, and the OP must seek proper resort before the proper forum under necessary provisions of law, in order to address his grievance, and thereafter, any extra amount paid by the OP in the given case will be adjusted accordingly.

Prayer of OP is rejected without cost.

Fix for payment.

D/C by me,

Sd/- B. Mallik
Judicial Magistrate
Tehatta, Nadia

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Judicial Magistrate
Tehatta, Nadia