

Misc. Case No. - 16/24

24.09.2025

Ld. Advocate for the petitioner Ruksana Begam @ Janinisha Begam has filed hazira.

The O.P Sk. Sarafat is also present before this court.

Today is the date fixed for passing order in respect of the petition filed on behalf of the O.P challenging the maintainability of the petition filed on behalf of the petitioner u/s. 147 of BNSS(section 128 of the Cr. P.C) claiming maintenance of a total sum of Rs. 2, 32,000/- for the period from 30.08. 2011 to 30.07. 2024 @ Rs. 1,500/- per month along with Rs. 500/- in addition to current maintenance, towards liquidation of the arrears of maintenance amounting to Rs. 2, 33,000/- in total.

Heard Ld. Advocate for both the parties on earlier occasion.

Perused the petition filed by the O.P on the ground of maintainability of the present petition and other materials on record including the provisions of section 147 of BNSS which corresponds to the provisions of section 128 of the Cr.P.C. No written objection has been filed on behalf of the petitioner to the said petition as filed by the O.P challenging its maintainability.

It appears on going through the contents of the maintainability petition as filed on behalf of the O.P Sk. Sarafat that he had not received any summons with regard to the Misc. case being no. 37 of 2011 filed by the petitioner against him before this court and that consequently, an ***ex parte order*** has been passed by this court in his absence and without his knowledge. The O.P has contended in the instant petition that subsequent to the passing of the ***ex parte order***, the petitioner had filed an Execution case in the year 2014 being Misc. (Exe) case no. 44 of 2014 claiming the arrears of maintenance allowance on and from the date of the filing of the maintenance case being no. 37 of 2011 but the said Misc. exe case had been dismissed for non prosecution on 30.04.2022 by this Court.

It also appears on going through the contentions as made by the O.P in the present petition that as per the Proviso 1 of section 125(3) of Cr.P.C which outlines the consequences for failing to comply with the maintenance order as passed by the Magistrate, “... ***no warrant shall be issued for the recovery of any amount due under the section unless application be made to the court to levy such amount within a period of one year for the date on which it became due...***’ and therefore, in view of the statutory provisions as envisaged in the first Proviso of the aforesaid section, it becomes amply clear that the period of limitation for filing a petition for enforcing the order of maintenance starts from the date of order granting such maintenance by the Ld. Magistrate because it is that date on which the maintenance amount becomes due and the said principle of law has been established as such by the judicial decisions of several Hon’ble Courts.

On careful of the legal provisions as envisaged in section 125(3) of Cr.P.C, it reveals to this Court that Ld. Magistrate is empowered to grant maintenance either from date of the passing of the order granting maintenance to the petitioner or from the date of the application for maintenance and this power would not be rendered fruitless if the past maintenance is limited to one year in terms of the first proviso to section 125(3) of Cr.P.C as the section as a whole has to be given a harmonious reading. In this context, reference may be made to a decision of the Hon’ble Court in **Srinivassa Rao Vs Rajeswari** reported in 1990 Cri. LJ 2506 in which the maintenance holder after the grant of maintenance by the court had allowed the amount to accumulate beyond a period of one year and consequently, the court had refused realisation beyond the period of one year, keeping in view the provisions of the aforesaid section of Cr.P.C.

Contd.....

Now considering the present case as filed by the petitioner under section 128 of Cr. P.C, it reasonably appears to this Court that the said section outlines the procedure for the enforcement of the maintenance order made under section 125 of Cr. P.C. It also reveals on traversing through the legal provisions as set forth in the said section that the said section provides broader mechanism for the enforcement and the recovery of the maintenance orders as passed by the competent court without any limitation period, ensuring that the amount due can be recovered at any time. Moreover, it also transpires to this court that period of one year limitation as envisaged under section 125(3) of Cr. P.C is not statutorily applicable in any petition filed under section 128 of Cr. P. C as the said section focuses on the actual recovery of the arrears of maintenance and therefore, can be invoked by the petitioner, even for the recovery of arrears of maintenance that are more than one year old.

In this context, it is further pertinent to mention herein that the words in the section 128 of Cr. P.C does not as such specify any limitation period for the enforcement or the execution of the maintenance orders as passed by the concerned courts, indicating clearly that the proceedings under the said section are not subject to any statutory time limit. This has been specifically held by the Judgment of the Hon'ble Madras High Court in the Criminal Revision case no. 1237 of 2009 (**P.Vaithi vs Kanagavalli**) and also by the Judgment of the Hon'ble Allahabad High Court in the case of **Kanchan Rawat and another vs State of U.P** delivered on 13.03.2024. It further reveals to this court that in contrast with section 125(3) of Cr.P.C which prescribe a limitation period of one year for initiating proceedings to enforce maintenance order, section 128 of Cr.P.C is free from such restrictions and this allows for the enforcement of the maintenance order even after the expiry of the limitation period applicable under the provisions of section 125 (3) of Cr.P.C. This has been specifically held by the Hon'ble Allahabad High Court in **Mohammad Usman Vrs. State of U.P.**

Therefore, the legal interpretation of the Hon'ble Courts with the regard to the proceedings under section 128 of Cr.P.C reflect that the said proceedings are not governed by the Limitation Act and since the limitation proceedings do not apply to the provisions of the aforesaid section under the Criminal Procedure Code, the said section being 128 of Cr.P.C provides a remedial and perpetually available remedy to the petitioner claiming arrears of maintenance beyond the limitation period of one year which ensures that the maintenance claim of the petitioner can be enforced at any time, providing a more effective remedy in this respect for the claimants or for the petitioners. Therefore, the courts by virtue of the aforesaid legal propositions have been inclined to reject the application of the Limitation Act filed in respect of proceedings u/s. 128 of Cr.P.C, affirming its unlimited enforceability.

In the light of the aforesaid discussion and keeping in view the legal principals as set forth by the Hon'ble courts with regarding to the proceeding filed u/s. 128 of Cr.P.C. I am inclined to reject the instant petition as filed by the O.P challenging the maintainability of the execution petition as filed on behalf of the petitioner u/s. 128 of Cr.P.C.

Hence, it is

Ordered

that the petition filed on behalf of the O.P challenging the maintainability of the petition filed on behalf of the petitioner u/s. 128 of Cr.P.C is hereby considered and rejected on contest without any order as to costs.

Contd....

Accordingly, it is hereby directed that the petitioner will be at liberty to proceed with the instant petition filed by her u/s. 128 of Cr.P.C for realisation of the arrears of maintenance due to the petitioner for the period from 30.08.2011 till 30.07. 2024.

D/C
Sd./-

Sd./-
Additional Chief Judicial Magistrate,
Raghunathpur, Purulia