A AMARENDRA KUMAR PAUL

v.

MAYA PAUL & ORS.

(Criminal Appeal No. 1413 of 2009)

AUGUST 4, 2009

B

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

Code of Criminal Procedure, 1973:

C *s.125 – Maintenance – Under s.125, son is entitled to grant of maintenance till he has not attained majority and daughter is entitled till she is not married.*

s.125 – Execution application – Period of limitation – On facts, order of stay granted by revisional court and by High D *Court in the s.125 proceedings – Limitation for filing application for execution would be computed upon excluding the period during which the order of stay was operating – Limitation.*

E **In 1984, a maintenance application was filed against appellant-husband u/s.125 Cr.P.C. by respondent-wife for herself and for her minor son and daughters. Magistrate ordered payment of maintenance @ Rs.500 p.m. in favour of wife and @ Rs.125 p.m. for the three minor children.** F **On 13.7.1994, the magistrate allowed application for enhancement of maintenance in respect of minor children @ Rs.450 p.m. from February, 1993. Revisional court and High Court upheld the order of magistrate.**

In 1998, respondents filed an application for G **execution of order dated 13.7.1994 before the magistrate praying for maintenance for the period May 1997 to April, 1998. The application was dismissed on 9.6.1999 opining that all the children had attained majority. However**

H

despite this, wife filed another execution case claiming maintenance for the period February 1993 to May 2004. The Magistrate opined that respondent-son became major on 11.5.1997. Respondent-daughter got married on 11.5.2003 and the other daughter was still unmarried. It was directed that the son was entitled to maintenance till he attained majority and daughters were entitled till marriage. However maintenance application for the period May, 1997 to April, 1998 was dismissed as the same was rejected earlier by the Court. Revision thereagainst was dismissed.

In appeal to this Court, appellant contended that the execution application for the purpose of executing the order granting maintenance for the minor children was not maintainable as they had attained majority; and that the period of limitation prescribed for filing an execution application for executing an order under Section 125 CrPC being one year, the impugned judgment was not maintainable.

Dismissing the appeal, the Court

HELD: 1. The Magistrate in his judgment dated 9.6.1999 categorically arrived at a finding of fact that in the year 1997, all the three children of the first respondent had attained majority. Her daughter was 8 years of age on 31.8.1984. She, thus, attained majority on or about 31.8.1994 whereas the other daughter and son who were twins, being aged 5 years on the said date, became major in 1997. An application for grant of maintenance, therefore, was maintainable, so far as the children were concerned, till they had not attained majority. As a cause of action for grant of maintenance would arise only in the event a person having sufficient means, neglects or refuses to maintain his legitimate or illegitimate minor child unable to maintain itself. Once, therefore, the

A **children attained majority, the said provision would cease to apply to their cases. [Paras 9 and 11] [387-B-C; 388-H; 389-A-B]**

2. A period of limitation is provided for in terms of B **Section 125 CrPC. However, in a case of this nature, Section 15 of the Limitation Act would apply. In fact, the order of stay was granted by the revisional court as also by the High Court in these proceedings. The limitation for filing application for execution would be computed upon** C **excluding the period during which the order of stay was operating. It is clear from the order of the Magistrate that no order of maintenance was passed in favour of the children after they attained majority. In that view of the matter, the question of recovery of any amount from the petitioners towards the maintenance granted to the** D **children after they had attained majority does not arise. In this case the direction was issued to recover the amount of maintenance only for the period prior to the sons' attaining majority and the daughters getting married and hence no interference with the impugned** E **judgment, in this behalf, is called for. [Paras 14, 15 and 18] [391-A; 392-D; 392-G-H; 393-A]**

Shantha @ Ushadevi & Anr. v. B.G. Shivananjappa **(2005) 4 SCC 468, relied on.**

F **Case Law Reference:**

(2005) 4 SCC 468	**relied on**	**Para 13**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1413 of 2009.

G

From the Judgment & Order dated 23.07.2007 of the High Court of Calcutta in C.R.R. No. 1510 of 2006.

R.K. Gupta, S.K. Gupta, Arun Yadav, Manoj K. Mishra for H the Appellants.

Avijit Bhattacharjee, Subrata Biswas for the Respondents. A

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Appellants herein are aggrieved by and dissatisfied with B a judgment and order dated 23rd July 2007 passed by a learned Single Judge of the Calcutta High Court whereby and whereunder the order dated 15th February 2006 passed by the Judicial Magistrate, 2nd Court, Berhampore, in Execution Case No.186 of 2005 for execution of an order passed under Section C 125 of the Code of Criminal Procedure (for short, 'the Code') was upheld.

3. The relationship between the parties is not in dispute. The 1st respondent is the wife of the appellant herein. They D have three children. 1st respondent herein filed an application in the year 1984 for grant of maintenance in terms of Section 125 of the Code not only on her own behalf but also on behalf of her two minor daughters, viz., Bandhu Priya Paul and Bandhu Priti Paul as also her minor son, viz., Bandhu Prakash Paul from February 1983. Pursuant thereto or in furtherance E thereof an order was passed in her favour by a learned Magistrate on 24th August 1987 directing payment of maintenance @ Rs.500/- per month in favour of 1st respondent and @ Rs.125/- per month for the three minor children.

F

An application for enhancement of the said amounts of maintenance was filed which was registered as Misc. Case No.6 of 1993. The learned Chief Judicial Magistrate, by a judgment and order dated 13th July 1994, directed enhancement of maintenance in respect of the said minor G children @ Rs.450/- per month from February 1993. A criminal revision case thereagainst filed by the appellant was dismissed by the learned Sessions Judge by an order dated 18th February 1997. The said order was challenged by the appellant before the High Court and the High Court dismissed the H

A application being C.R.R.No.1852 of 1997 filed by the appellant by an order dated 12th March 2004 stating :

> "13. I find, therefore, that there is no reason whatsoever to interfere with the impugned order of the learned Additional Sessions Judge, Murshidabad dated 18.2.1997 in
B Criminal Motion No.285/94 and the same is affirmed. This revisional application has no merits and is, therefore, dismissed."

4. In the meantime, in the year 1998, an application for
C execution of the order dated 13th July 1994 was filed in the court of Chief Judicial Magistrate, Murshidabad praying for maintenance for the period May 1997 and April 1998. The said application was dismissed opining that one of the objections taken therein was that all the children had attained majority. The
D relevant portion of the said order dated 09th June 1999 runs as under :

> "It appears that this execution case is filed for the maintenance allowance of three children of the Petitioner
E and for the period from May 1997 to April 1998 in execution of the order passed in their favour on 13.7.1994. It appears that the children are 1) minor Bandhu Priya Pal, 2) minor Bandu Priti Pal and 3) minor Bandhu Prokash Pal.
>
F Now it appears from the certified copy of the petition for maintenance dated 31.8.1984, that the then age of the claimant Bandhu Priya Pal was 8 years and of the other two was 5 years being the twin of their parents. Therefore in 1997 all of them were in the age of 18 or more than 18
G years. Hence, as per the order in execution and the provision of law on this point the claimants are not entitled to maintenance after attaining the age of majority i.e. 18 years and, therefore, the objection sustained and the instant case stands dismissed."

H

5. However, despite the same, the 1st respondent filed another Execution Case bearing No.186 of 2005 before the learned Judicial Magistrate Second Court, Berhampore claiming maintenance @ Rs.450/- per month on and from February 1993 to May 2004. By reason of an order dated 15th February 2006, the learned Magistrate Second Court, Berhampore, directed as under :

> "Now, in the present case, the Petitioner has filed an affidavit dated 6.5.05, wherein she admitted that her son Bandhu Prakash Pal has become major on 11.5.97. That her daughter Bandhu Priya Pal has been married on 11.5.2003 and that Bandhu Priti Pal is still unmarried. The copy of this affidavit has duly been served to the learned advocate for the OP but he did not file any objection, thereby admitting its content. Moreover, at the time of hearing the learned advocate for the OP admits the contents of the affidavit.
>
> Hence, I am to hold that the son is entitled to maintenance till attaining majority as per provision of Clause (b), sub section (i), Section 125 Cr. P.C. and that the daughters are entitled to maintenance till marriage.
>
> However, the application for the period from May, 1997 to April 1998 has been dismissed by this Court by order dated 9.6.1999 passed in Misc. Ex. No.378 of 1998. Hence, I am not inclined to allow maintenance to the Petitioner from May 1997 to April, 1998 as the same was earlier rejected by this Court.
>
> Hence, it is ORDERED that Bandhu Prakash Pal is entitled to get maintenance till 11.5.1997, Bandhu Priya Pal is entitled to get maintenance till 11.5.2003 i.e., the date of her marriage and Bandhu Priti Pal is entitled to get maintenance till May, 2004, as claimed in the petition. All the three children are entitled to get maintenance since

A February, 1993. The period from May, 1997 to April, 1998, is to be excluded in case of both the daughters of the Petitioner."

6. Appellant filed a revision application thereagainst which B was dismissed stating :

"Having considered the rival submissions of the learned advocates appearing for the parties, I am of the opinion that the submissions made by Mr. Mondal has sufficient force and he has very correctly submitted that the C question of limitation for filing the execution case does not at all arise in the instant case in view of the stay order passed by the learned Sessions Court and then by this Hon'ble Court. Thus, accordingly, there was no bar in entertaining the application for realization of arrear D maintenance. This application has no merits and stands dismissed.

I further, make it clear that while computing the amount of arrear maintenance, the learned Judge must E take into account, if any amount has been paid towards the maintenance of the opposite party no.1 by the Petitioner for the period in question and for that purpose the Petitioner shall be given reasonable opportunity to establish the same and if the learned judge finally found F that any amount has been paid by the Petitioner for the said period, the same is to be adjusted against payment of arrear maintenance."

7. Mr. R.K. Gupta, the learned counsel appearing on behalf of the appellant would submit that the execution application for G the purpose of executing the order granting maintenance for the minor children was not maintainable as they had attained majority. It was furthermore contended that the period of limitation prescribed for filing an execution application for executing an order under Section 125 of the Code being one

H

year, the impugned judgment cannot be sustained. A

8. The learned counsel appearing on behalf of the respondents, however, would support the judgment of the High Court.

9. The learned Chief Judicial Magistrate, as noticed B hereinbefore, in his judgment dated 09th June 1999, has categorically arrived at a finding of fact that in the year 1997, all the three children of the 1st respondent had attained majority. Bandhu Priya Paul was 8 years of age on 31st August 1984. She, thus, attained majority on or about 31st August 1994 C whereas Bandhu Priti Paul and Bandhu Prakash Paul, who were twins, being aged 5 years on the said date, became major in 1997.

10. Sub-section (1) of Section 125 of the Code reads as D under :

> *"125. Order for maintenance of wives, children and patents,*-(1) If any person having sufficient means neglects or refuses to maintain-
>
> E
>
> (a) his wife, unable to maintain herself, or
>
> (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
>
> (c) his legitimate or illegitimate child (not being a F married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
>
> (d) his father or mother, unable to maintain himself or G herself,
>
> a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, H

A father or mother, at such monthly rate, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation.-For the purposes of this Chapter.-

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried."

11. An application for grant of maintenance, therefore, is maintainable, so far as the children are concerned, till they had not attained majority. As a cause of action for grant of

maintenance would arise only in the event a person having sufficient means, neglects or refuses to maintain his legitimate or illegitimate minor child unable to maintain itself. Once, therefore, the children attained majority, the said provision would cease to apply to their cases

12. Sub-section (3) of Section 125 of the Code provides for a period of limitation, stating :

> "(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any port of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made :
>
> Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:
>
> Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.
>
> *Explanation*.-If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him."

A 13. A Division Bench of this Court in the case of *Shantha @ Ushadevi & Anr. v. B.G. Shivananjappa* (2005) 4 SCC 468, held:

> "7. It is true that the amount of maintenance became due by virtue of the Magistrate's order passed on 20-1-1993 and in order to seek recovery of the amount due by issuance of warrant, application shall be made within a period of one year from the date the amount became due. In the present case, the application, namely, Crl.Misc. Petition No.47 of 1993 was filed well within one year. As no amount was paid even after the disposal of the matter by the High Court, the appellant filed IA No.1 in Crl.Misc.Petition No.47 of 1993 wherein the arrears due up to that date were calculated and sought recovery of that amount under Section 125(3). Thus, IA No.1 was filed even when Crl.Misc.Petition No.47 of 1993 was pending and no action to issue warrant was taken in that proceeding. Crl.Misc.Petition No.47 of 1993 which was filed within one year from the date the amount became due was kept alive and it was pending throughout. The purpose of filing IA on 16-6-1998 was only to mention the amount due up to date. The fact that the additional amount was specified in the IA does not mean that the application for execution of the order by issuing a warrant under Section 125(3) was a fresh application made for the first time. As already noticed, the main petition filed in the year 1993 was pending and kept alive and the filing of subsequent IA in 1998 was only to specify the exact amount which accrued due up to that date. Such application is only supplementary or incidental to the petition already filed in 1993 admittedly within the period of limitation. The fact that only a sum of Rs.5365 representing the arrears of eight months was mentioned therein does not curtail the scope of criminal miscellaneous petition filed in 1993 more so when no action was taken thereon and it remained pending."

14. A period of limitation is provided for in terms of the aforementioned provision. However, in a case of this nature, Section 15 of the Limitation Act would apply which reads as under :

> *"15. Exclusion of time in certain other cases.*-(1) In computing the period of limitation of any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.
>
> (2) In computing the period of limitation for any suit of which notice has been given, or for which the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.
>
> *Explanation.*-In excluding the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be counted.
>
> (3) In computing the period of limitation for any suit or application for execution of a decree by any receiver or interim receiver appointed in proceedings for the adjudication of a person as an insolvent or by any liquidator or provisional liquidator appointed in proceedings for the winding up of a company, the period beginning with the date of institution of such proceeding and ending with the expiry of three months from the date of appointment of such receiver or liquidator, as the case

A may be, shall be excluded.

(4) In computing the period of limitation for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

B

(5) In computing the period of limitation for any suit the time during which the defendant has been absent from India and from the territories outside India under the administration of the Central Government, shall be excluded."

C

15. In fact, the order of stay had been granted by the revisional court as also by the High Court in the aforementioned proceedings. The limitation for filing application for execution would be computed upon excluding the period during which the order of stay was operating.

D

16. We may place on record that the notice was issued only on the question s to whether the amount of maintenance could have been directed to be recovered despite the fact that the children had attained majority.

E

17. It appears that the said question was formulated on the basis of the submission made at the Bar. We have dealt with all the questions raised before us. In view of the findings arrived at by us, such a question does not arise for consideration.

F

18. It is clear from the order of the learned Magistrate that no order of maintenance was passed in favour of the children after they attained majority. In that view of the matter, the question of recovery of any amount from the petitioners towards the maintenance granted to the children after they had attained majority does not arise. In this case the direction has been issued to recover the amount of maintenance only for the period prior to the sons' attaining majority and the daughters getting married and hence no interference with the impugned judgment,

G

H

in this behalf, is called for. A

19. In any view of the matter, it, in our opinion, is not a fit case wherein we should exercise our discretionary jurisdiction even it be assumed that the Execution case was filed only by the respondent. B

20. For the reasons aforementioned, this appeal is dismissed. However, in the facts and circumstances of this case, there shall be no order as to costs.

D.G. Appeal dismissed. C