

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF MARCH 2016

BEFORE

HON'BLE MR. JUSTICE PRADEEP D. WAINGANKAR

CRIMINAL PETITION NO.8113 OF 2015

BETWEEN:-

MR. A.S. PRAVEEN KUMAR
S/O A.S. SHANKAR RAO
AGED ABOUT 42 YEARS
R/AT. ROOM No.6, MODALIYAR LANE
NETTAKAPPA CIRCLE
BASAVANAGUDI
BANGALURU – 560 004.

... PETITIONER

(BY SRI. P.P. HEGDE, ADV.,)

AND:-

1. SMT. ASHWINI
AGED ABOUT 25 YEARS
W/O A.S. PRAVEEN KUMAR
C/O SRI. ANAND
R/O. SHREE DURGA, KAMBLA PARI
PADUTHONSE VILLAGE
KEMMANNU POST
UDUPI TALUK – 576 101.

2. BHOOMIKA,
MINOR
REP. BY HER MOTHER
ASHWINI, R/AT. PADUTHONSE
KEMMANNU POST
UDUPI TALUK – 576 101.

.... RESPONDENTS

THIS CRL.P. IS FILED U/S. 482 CR.P.C. PRAYING TO DIRECT THE LEARNED ADDL. CIVIL JUDGE AND J.M.F.C. UDUPI TO CONSIDER THE OBJECTION DATED 16.07.2015 FILED BY THE PETITIONER IN CRL.MISC.No.359/2013.

THIS CRIMINAL PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT PASSED THE FOLLOWING:-

ORDER

Petitioner is the husband and respondent is the legally wedded wife of the petitioner. On the ground that she and her three year's child has been deserted, neglected and refused to maintain by the petitioner without any lawful excuse, she filed a petition under Section 125 Cr.P.C. claiming maintenance from the respondent in Crl.Misc.No.126/2007 on the file of Addl. Civil Judge and JMFC, Udupi. The petition came to be partly allowed granting maintenance at the rate of Rs.5,000/- each per month from the date of the petition. The petitioner failed to pay maintenance as ordered by the Magistrate. As such, the respondent wife filed a petition under Section 125(3) Cr.P.C. for recovery of arrears of maintenance for the period running from 18.1.2007 to 17.9.2013(80 months) in Crl.Misc.359/2013 amounting to Rs.6,80,000/-. Upon receipt of notice, the petitioner appeared

and filed his objections dated 16.7.2015 contending therein that the claim for arrears of maintenance for a period of more than 12 months is barred by limitation. The learned Magistrate without consideration of the objections filed by the petitioner as to the limitation, issued fine levy warrant against the petitioner. Aggrieved by the order as to the issue of fine levy warrant (FLW), this petition is filed to quash the order.

2. The submission of the learned counsel for the petitioner is under Section 125(3) Cr.P.C., the limitation to file a petition for recovery of arrears of maintenance is 12 months and that the arrears of maintenance beyond of period of 12 months is barred by limitation and as such the Magistrate has no power to issue FLW for recovery of arrears of maintenance beyond the period of one year. There is an element of truth in the submission made by learned counsel for the petitioner. The limitation for recovery of arrears of maintenance is one year, unless the respondent wife was prevented from filing petition for recovery of arrears of maintenance by virtue of the stay order passed by the

Appellate Court or Revisional Court. If there was no stay order, the petition for recovery of maintenance is to be filed for recovery of maintenance for a period of one year. As such, the petition filed by the petitioner for recovery of arrears of maintenance for period of 80 months is not maintainable. Hence, the order as to the issuance of fine levy warrant for recovery of arrears of maintenance for a period of 80 months is liable to be quashed. If at all the respondent-wife is entitled to recover maintenance in CrI.Misc.359/2013 for the period of 12 months running from 26.9.2012 to 26.9.2013 the date of filing of the petition. The arrears of maintenance for the period earlier to 26.9.2012 claimed in CrI.Misc.359/2013 is barred by time, inasmuch as, it cannot be recovered under Section 125(3) of Cr.P.C.

3. Accordingly, the petition filed by the petitioner-husband is **allowed**. The order of issuance of fine levy warrant to the petitioner in CrI Misc.No.359/2013 on the file of Addl. Civil Judge and JMFC, Udupi is set-aside. The learned Magistrate is directed to consider the statement of

objections dated 16.7.2015 filed by the respondent and dispose of the main petition in the light of the observation made by this Court during the course of its order. In view of disposal of the main matter, I.A.1/15 for stay does not survive for consideration. Accordingly, it is disposed of.

Sd/-
JUDGE

*mn/-