

IN THE HIGH COURT OF KARNATAKA AT BANGALORE  
DATED THIS THE 18<sup>TH</sup> DAY OF NOVEMBER 2004  
BEFORE

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THE HON'BLE MR.JUSTICE S.B.MAJAGE

CRIMINAL PETITION NO.1905/2003

BETWEEN:

Dhareppa,  
S/o Sidramappa Jugati,  
Aged about 35 years,  
Occ: Agriculture,  
Resident of Mannur,  
Tal:B.Bagewadi, Dist:Bijapur.

..PETITIONER.

(By Sri Praveen Kumar Raikote, Advocate.)


AND:

Smt.Renuka,  
W/o Dhareppa Jugati,  
Age: Major, Occ: Household,  
Resident of Kalagi,  
Tal:Muddebihal, Dist:Bijapur.

..RESPONDENT.

(By Smt. Anupama Hegde, Advocate.)

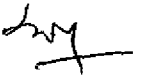
This Criminal Petition is filed under Section 482 of Cr.P.C. praying to set aside the judgment and order passed by the II Additional Sessions Judge, Bijapur, in Crl.R.P.No.182/2002 dated 07.04.2003 confirming the judgment and order passed by the J.M.F.C., Muddebihal, in Crl.Misc.No.84/2001, dated 10.10.2002.

This Criminal Petition having been heard and reserved and coming on for pronouncement of order this day, the Court made the following: 

**ORDER**

In this petition, the petitioner has challenged the order dated 07.04.2003 passed in Criminal Revision Petition No.182/2002 by the Court of II Additional Sessions Judge, Bijapur, by which, that petition has been dismissed with cost of Rs.1,000/- to the respondent.

2. Brief facts giving rise to the present matter are: The respondent, who is admittedly the wife of the petitioner, had filed maintenance petition under Section 125 of Cr.P.C. claiming maintenance from the petitioner and that petition was allowed on 30.10.1999 awarding maintenance to her at the rate of Rs.350/- per month from the date of petition. Challenging that order, the petitioner filed Criminal Revision Petition No.297/99 before the Court of Sessions at Bijapur, which was dismissed on 22.10.2001. Within five days thereafter, on 27.10.2001, the respondent - wife filed Crl.Misc.No.84/2001 for recovery of arrears of maintenance for the period from 05.07.1996 to 27.10.2001 (i.e., from the date of filing petition under Section 125 of Cr.P.C. to the date of filing recovery petition). In that proceeding, warrant came to be issued against the



petitioner. Challenging that, the petitioner approached the Court of Sessions in Criminal Revision Petition No.182/2002, which upheld the warrant ordered by the learned Magistrate and dismissed the petition with cost, as noted already. Hence, the petitioner is before this Court.

3. Heard the learned counsel for the parties. It was vehemently argued for the petitioner - husband that in view of the proviso to Section 125(3) of Cr.P.C., the arrears of maintenance cannot be recovered for the period beyond one year i.e., the amount of arrears accrued for more than one year up to the date of filing recovery petition cannot be recovered. On the other hand, it was submitted for the respondent - wife that as the revision petition filed against the order of maintenance awarded by the learned Magistrate was pending till 22.10.2001, the period of one year requires to be computed from that date and not from 30.10.1999 - the date on which the petition filed under Section 125 Cr.P.C. was allowed awarding maintenance. In support of his contention, reliance was placed on the decision reported in AIR 1968 ORISSA 35.

4. The only point for consideration is:



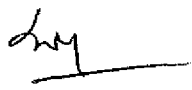
"Whether the respondent could claim maintenance from the date of petition to till 27.10.2001 i.e., for a period of more than one year earlier to the petition filed to recover the arrears of maintenance amount?"


5. It is admitted by the parties that when the petitioner filed revision petition challenging the order of maintenance passed against him, there was stay of that order and that came to be vacated on 04.01.2000. So, it was argued for the petitioner that the respondent could have enforced the order of maintenance on 04.01.2000 or at any time within a period of one year from that date but not thereafter, claiming arrears accrued till the date of filing recovery petition. In that connection, placed reliance on a decision of this Court in the case of LAKSHMAN RAO SAKHARAM SURVASE Vs. SMT.MANGALA W/O LAKSHMAN RAO SURVASE (1991 CRI.L.J.1980).

6. In the said decision, there was stay (in operation) till the disposal of the revision petition by the Sessions Court and as such, this Court took the view that the period of one year has to be computed from the date of dismissal of the revision petition. So, said decision could have helped the respondent, provided the stay given in the revision petition filed by the petitioner had remained in force till

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the disposal of the revision petition. But, it is not so and the stay came to be vacated on 04.01.2000 admittedly. However, the learned Sessions Judge, without advertting himself to the facts of the case which were before this Court in the case of LAKSHMAN RAO SAKHARAM SURVASE (supra), erroneously held that the said decision is in favour of the respondent - wife and, in support of that, extracted Paragraph No.9 of the said judgment. No doubt, the observations made in the said paragraph support the case of the respondent - wife but, in fact, said decision does not help the respondent in any way as she filed recovery petition after a period of more than one and a half years of the vacation of stay by the Court of Sessions.

7. That apart, recently, in the case of B.G.SHIVANANJAPPA Vs. SHANTHA @ USHADEVI AND ANOTHER [2004(3) KCCR 1624], this Court has clearly held that an application under Section 125(3) of Cr.P.C. to recover arrears of maintenance would be barred by limitation if it is not filed within one year from the date on which the maintenance becomes due. 

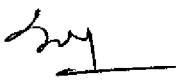
8. It need not be said, maintenance amount becomes due when it is recoverable. In the present case, as there was stay in Criminal Revision Petition No.297/99, the respondent could have executed the order of maintenance on/after it was vacated on 04.01.2000. The maintenance, which had become due on the date of order passed by the learned Magistrate awarding maintenance on the petition filed under Section 125 of Cr.P.C., could have been recovered by the respondent within one year from the date i.e., on 30.10.1999, on which date maintenance was awarded by the learned Magistrate. However, on account of stay in Criminal Revision Petition No.297/99, it could not have been recovered or enforced till 04.01.2000, when stay was in operation. So, thereafter the respondent could have enforced the order of maintenance within one year from 04.01.2000 so far as the amount of maintenance fallen due till then. But, for the reasons best known to her, she did not prefer to do so and allowed the period of limitation to lapse. So, the said two decisions of this Court come against the respondent in claiming maintenance for the period from 05.07.1996 to 27.10.2000, which she could have claimed if filed recovery petition on or earlier to 03.01.2001, but not now. Of course, 

now she is entitled to claim maintenance arrears for the period of one year earlier to 27.10.2001 - the date of filing recovery petition i.e., for the period from 26.10.2000 to 27.10.2001 and not for the period earlier to 26.10.2000. To my mind, the decision of the High Court of Orissa, relied on for the respondent, does not help her much in the facts and circumstances of the present case, particularly when stay was vacated on 04.01.2000. In fact, in the case of LAKSHMAN RAO SAKHARAM SURVASE (*supra*), this Court had referred that decision, but did not find it in favour of wife.

9. In my view, the words 'become due' found in the proviso to Section 125(3) of Cr.P.C. have to be read as become recoverable/enforceable and as such, it cannot be held that she is entitled to claim arrears accrued till 26.10.2000.

10. In the above view, the impugned order passed by the learned Sessions Judge cannot be sustained so far as it relates to the arrears of maintenance for the period from 05.07.1996 to 26.10.2000 though, of course, the respondent - wife is entitled to (claim) arrears of maintenance for the period of one year earlier to 27.10.2001 i.e., for the period from 26.10.2000 to 27.10.2001. 

11. It is unfortunate that the respondent - wife, who was awarded maintenance by the learned Magistrate towards her maintenance from 05.07.1996 is now deprived of the same from that period to 26.10.2000 i.e., for the period of four years three months and 21 days on account of her inaction in enforcing the order of maintenance. For this, she alone has to take the blame because, for the reasons known to her, she did not file petition to recover maintenance for the period from 05.07.1996 either immediately after it was awarded to her by the learned Magistrate, or at least within a year from 04.01.2000, on which date stay was vacated by the Court of Sessions. If she had filed petition as stated above, she would not have lost huge arrears of maintenance for the period of more than four years. This case is an eye-opener to similarly situated persons, who get an order of maintenance in their favour but do not file execution petition to enforce such order to claim the arrears of maintenance awarded by Court. Unless there is stay against such order, Under law, if simply such an order is challenged or revision petition is filed before the competent Court against such order, it does not operate as stay for the execution of such an order and as





such, does not save the period of limitation of one year provided in the proviso to Section 125(3) of Cr.P.C. for enforcing an order of maintenance to recover arrears of maintenance.

12. It is true that Section 125 of Cr.P.C. is meant for the benefit of persons, who need maintenance and requires to be construed accordingly. But, as long as the said proviso providing limitation to recover arrears of maintenance is in the statute book, no other view could be taken. It is for the Legislature, to consider and decide whether said proviso be deleted or amended suitably so that persons having such an order in their favour, who, either on account of ignorance or for some other reason, fail to enforce it within one year, can enforce it even after one year or, to make a provision so that such an order could be enforced within a year of its attaining finality.

13. Be that as it may, the impugned order requires to be interfered with so far as the recovery of arrears of maintenance for the period from 05.07.1996 to 26.10.2000 is concerned and not for the period from 26.10.2000 to 27.10.2001 i.e., for the period of one

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year earlier to the filing of petition to recover arrears of maintenance accrued till then.

No other point has been raised nor arises for consideration.

In the result and for the foregoing reasons, the petition is allowed in part, holding that the respondent - wife is entitled to claim arrears of maintenance for the period from 26.10.2000 to 27.10.2001 and not for the period from 05.07.1996 to 26.10.2000.

In the circumstances, parties to bear their respective cost.

Sd/-  
Judge

Sh/-