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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRR(F)-1468-2023 (O&M)
Date of decision: 18.10.2024**

Amrik Singh

...Petitioner

Vs.

Jannatpreet Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Komalpreet Kaur, Advocate for
Mr. Deepak Arora, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been preferred against the impugned order dated 29.07.2023 passed by learned Additional Principal Judge, Family Court, Gurdaspur, whereby half of the amount lying in the pension account of the petitioner, as on the date of passing of the impugned order, was ordered to be attached in order to recover the maintenance amount, which has fallen in arrears.

2. The marriage between the petitioner and respondent No.3 was solemnized on 31.03.2015 and two sons i.e. respondents No.1 & 2 were born out



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of the wedlock. However, soon after solemnisation of the marriage, matrimonial dispute ensued between the couple and the respondents filed a petition under Section 125 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') [*now Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS')*] seeking maintenance for themselves. Resultantly, the petitioner was directed to pay Rs.7,000/- per month to respondent No.3-wife and Rs.4,000/- per month to each of two minor sons as maintenance vide order dated 26.02.2016. Subsequently, upon non-payment of the maintenance amount, the respondents preferred an execution application on 16.02.2019 for recovery of the amount of arrears amounting to Rs.12,15,000/-. In the execution proceedings, it was observed that the petitioner has not paid a single penny to clear the maintenance amount, which has fallen in arrears. Correspondingly, learned Family Court, vide impugned order dated 29.07.2023, directed the attachment of half of amount lying in the pension account of the petitioner till further orders for the realisation of arrears of maintenance towards the respondents.

3. Learned counsel for the petitioner, *inter alia*, contends that the impugned order dated 29.07.2023 is liable to be set aside since learned Family Court did not have the jurisdiction to entertain the execution application, as in the given case, the original order pertaining to maintenance was passed by learned Judicial Magistrate 1st Class. Because the maintenance was ordered to be paid by learned Judicial Magistrate 1st Class, the respondents should have preferred the



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execution application before the same Court and not before the Family Court. Learned counsel further avers that as per Section 125(3) of Cr.P.C. (*now Section 144(3) of BNSS*), there is limitation period of 01 year for recovering the maintenance amount, which has fallen in arrears. Therefore, execution application for arrears of maintenance for a period beyond one year is not maintainable. Lastly, it is submitted that Section 60(1)(g) of the Code of Civil Procedure, 1908 (for short 'CPC') and Section 11 of The Pensions' Act, 1871 (for short 'Pension Act') preclude the authorities from attaching pension for the execution of any decree and hence, the impugned order ought to be set aside.

4. I have heard learned counsel for the petitioner and carefully perused the record of the case with his able assistance.

5. The object and purpose behind granting maintenance is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of failure of marriage. At the same time, a just and careful balance must be struck to ensure that this provision does not degenerate into a weapon to punish the other spouse. The Courts are required to conduct the maintenance proceedings while being alive to the legislative intent behind the provision under Section 125 Cr.P.C. (*now Section 144 of BNSS*) in its true spirit, which is to provide speedy assistance and social justice to women, children and infirm parents. The provisions of Section 125 Cr.P.C. (*now Section 144 of BNSS*) were enacted as a measure to further social justice and protect dependent women, children and



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parents, which also fall within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India.

6. A three-Judge Bench of the Hon'ble Supreme Court in ***Vimala (K.) Vs. Veeraswamy (K.), (1991) 2 SCC 375***, speaking through Justice Fatima Beevi, opined that as follows:

“3. Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing, and shelter to the deserted wife.”

7. A two-Judge Bench of the Hon'ble Supreme Court in ***Kirtikant D. Vadodaria Vs. State of Gujarat, (1996) 4 SCC 479***, speaking through Justice Faizan Uddin, opined as follows:

“15. ...While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation.”



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8. There is a general tendency on the part of the wife to amplify her needs and the husband to conceal his actual income, making it difficult to determine the earning capacity of the rival claimants with exactitude. The rival claimants must scrupulously bring on record their actual respective earning capacities in order for the Court to arrive at quantum of maintenance which is just and fair in terms of principle of equistatus. The quantum of maintenance must be justifiable and realistic to provide succour to the dependent spouse and also to avoid occurrence of the two extremes of the maintenance being either paltry or extravagant, ensuring that neither of the two is reduced to a life of penury. The adequacy of the maintenance allowance has to be determined by the yardstick of the dependent spouse being able to lead a life of reasonable comfort.

9. At this juncture and for proper adjudication of the present case, it is pertinent to refer to the relevant provisions contained in Section 7 of The Family Courts Act, 1984 (for short 'Family Courts Act'), Section 125 of Cr.P.C. (*now Section 144 of BNSS*), Section 60 of CPC and Section 11 of the Pension Act, which are extracted below:

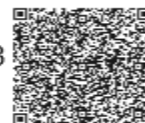
“Section 7: Jurisdiction.

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(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise— (a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and (b) such other jurisdiction as may be conferred on it by any other enactment.



Section 125: Order for maintenance of wives, children and parents.

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(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 part of each months 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 wifes refusal to live with him.

Section 60: Property liable to attachment and sale in execution of decree.

(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own



benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely:

- (a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;*
- (b) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;*
- (c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist or a labourer of a domestic servant and occupied by him ;*
- (d) books of account ;*
- (e) a mere right to sue for damages ;*
- (f) any right of personal service ;*
- (g) stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer, or payable out of any service family pension fund notified in the Official Gazette by the Central Government or the State Government in this behalf, and political pensions;*
- (h) the wages of labourers and domestic servants, whether payable in money or in kind;*
- (i) salary to the extent of the first one thousand rupees and two third of the remainder in execution of any decree other than a decree for maintenance:*



Section 11: Exemption of pension from attachment.

No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance, and no money due or to become due on account of any such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any Court, at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court. This section applies also to pensions granted or continued, after the separation of Burma from India, by the Government of Burma.

10. A bare reading of Section 7(2) of the Family Courts Act indicates that learned Family Court had complete jurisdiction to entertain the execution application filed by the respondents and as such, the averments put forth by the learned counsel for the petitioner cannot be taken on board.

11. However, the contention advanced by learned counsel that the execution proceedings for realization of the entire amount are barred by limitation merits acceptance. Section 125(3) of Cr.P.C. (*now Section 144(3) of BNSS*) stipulates that an execution petition for recovery of the arrears of maintenance must be confined to one year immediately preceding the date of filing the petition. In the present case, the execution application was moved on 16.02.2019 and therefore, the respondents can only seek recovery of arrears as accruing from 17.02.2018. Be that as it may, it is pertinent to mention that the limitation period of one year as contemplated under Section 125(3) of Cr.P.C. (*now Section 144(3) of BNSS*) merely proscribes the mode of recovery through



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the Court and not the liability itself. There still remains a continuing liability to pay the arrears in maintenance, even after the right to recover such arrears under Section 125 Cr.P.C. (*now Section 144 of BNSS*) is extinguished.

12. As such, the respondents can always pursue the remedy of filing a civil suit for recovery to recover the arrears of maintenance that became due prior to one year from the date of application before learned Family Court, subject to just exceptions. A two Judge Bench of the Hon'ble Supreme Court in ***Poongodi and another Vs. Thangavel, (2013) 10 SCC 618***, speaking through Justice Rajan Gogoi, observed as follows:

*“4. A reading of the order dated 21.4.2004 passed by the High Court would go to show that the proviso to Section 125(3) Criminal Procedure Code has been construed by the High Court to be a fetter on the entitlement of the claimants to receive arrears of maintenance beyond a period of one year preceding the date of filing of the application under Section 125(3) Criminal Procedure Code. Having considered the said provision of the Code we do not find that the same creates a bar or in any way effects the entitlement of a claimant to arrears of maintenance. What the proviso contemplates is that the procedure for recovery of maintenance under Section 125(3) Criminal Procedure Code, namely, by construing the same to be a levy of a fine and the detention of the defaulter in custody would not be available to a claimant who had slept over his/her rights and has not approached the Court within a period of one year commencing from the date on which the entitlement to receive maintenance has accrued. **However, in such a situation the ordinary remedy to recover the amount of maintenance, namely, a civil action would still be available.**”*

13. A close scrutiny of Section 125(3) of Cr.P.C. (*now Section 144(3) of*



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BNSS) reveals that in case of breach of the order directing payment of maintenance, the Magistrate may issue warrant for levying the amount due in the manner provided for levying fines as prescribed under Section 421 of Cr.P.C. (*now Section 461 of BNSS*) and the Magistrate may also sentence such person for the whole or any part of each month allowance. Both of these are methods to impel the person against whom execution proceedings have been initiated to pay the maintenance amount which has fallen in arrears. However, the employment of these modes of enforcing recovery is not to be confused with the actual realisation of the maintenance amount due or as a satisfactory substitute for the latter. The ambit and scope of the powers as devolved by Section 125(3) of Cr.P.C. (*now Section 144(3) of BNSS*), are not to penalize or punish the transgressing party, who hasn't complied with the order, but rather, to drive him to a situation where he is put under an obligation to pay the monthly allowance and makes the actual payment of arrears.

14. The distinction between the mode of enforcing recovery and effecting actual recovery of the amount of maintenance, which has fallen in arrears in the context of the provisions under Section 125(3) of Cr.P.C. (*now Section 144(3) of BNSS*) was discussed in the case of ***Smt. Kuldip Kaur Vs. Surinder Singh and anr., (1989) 1 SCC 405***, wherein a two Judge Bench of the Hon'ble Supreme Court, speaking through Justice M.P. Thakkar, made the following observations:



“6. A distinction has to be drawn between a mode of enforcing recovery on the one hand and effecting actual recovery of the amount of monthly allowance which has fallen in arrears on the other. Sentencing a person to jail is a 'mode of enforcement'. It is not a 'mode of satisfaction' of the liability. The liability can be satisfied only by making actual payment of the arrears. The whole purpose of sending to jail is to oblige a person liable to pay the monthly allowance who refuses to comply with the order without sufficient cause, to obey the order and to make the payment. The purpose of sending him to jail is not to wipe out the liability which he has refused to discharge. Be it also realised that a person ordered to pay monthly allowance can be sent to jail only if he fails to pay monthly allowance 'without sufficient cause' to comply with the order. It would indeed be strange to hold that a person who 'without reasonable cause' refuses to comply with the order of the Court to maintain his neglected wife or child would be absolved of his liability merely because he prefers to go to jail. Sentence of jail is no substitute for the recovery of the amount of monthly allowance which has fallen in arrears. Monthly allowance is paid in order to enable the wife and child to live by providing with the essential economic wherewithal. Neither the neglected wife nor the neglected child can live without funds for purchasing food and the essential articles to enable them to live. Instead of providing them with the funds, no useful purpose would be served by sending the husband to jail. Sentencing to jail is the means for achieving the end of enforcing the order by recovering the amount of arrears. It is not a mode of discharging liability. The section does not say so. The Parliament in its wisdom has not said so. Commence does not support such a construction. From where does the Court draw inspiration for persuading itself that the liability arising under the order for maintenance would stand discharged upon an effort being made to recover it? The order for monthly allowance can be discharged only upon the monthly allowance being recovered. The liability cannot be taken to have been by sending the person liable to pay the monthly allowance, to jail. At the cost of repetition it may be stated that it is only a mode or method of recovery and not a substitute for recovery. No other view is possible.”

15. Reliance in this regard may further be placed on judgments of the Hon'ble Supreme Court rendered in ***Shantha alias Ushadevi and another Vs.***



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B.G. Shivananjappa, (2005)4 SCC 468 and Shahada Khatoon & Ors. Vs. Amjad Ali & Ors., (1999)5 SCC 672.

16. As far as the matter of attachment of pension is concerned, this Court is of the opinion that neither the maintenance allowance granted to the wife or minor children can be considered to be a 'debt' nor the wife or minor children can be considered to be 'creditors', by any stretch of imagination. Therefore, the exemption under Section 11 of the Pension Act and Section 60 of CPC cannot be extended to the petitioner/judgment-debtor in execution proceedings. In view of the object of Section 125 Cr.PC. (*now Section 144 of BNSS*), the petitioner-husband is bound to pay the maintenance amount as ordered by the Court. The same is a personal liability and the petitioner-husband cannot be allowed to avoid it by seeking refuge of Section 11 of the Pension Act or Section 60 of CPC, as it would be against the interest of justice.

17. A Co-ordinate Bench of the Bombay High Court in the case of ***Bhagwant Vs. Radhika, 2019(3) BomCR (Cri) 600*** was confronted with the same question, wherein, speaking through Justice M.G. Giratkar, the following was held:

"4. ...The above said Section shows that in civil disputes pensions cannot be attached at the instance of creditors. Commentary relied on by learned counsel for the applicant/husband at serial No.16 under head of attachment shows that, "maintenance allowance granted to wife cannot be considered as debt - She is not a creditor hence exemption under Section 11 cannot be granted to husband. (1985)87 Punk LR 682 : (1985) 12 Cri LT 219". The said



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commentary itself shows that pensions can be attached to recover amount of maintenance. Hence, the stand taken by learned counsel for the applicant/husband that pensions cannot be attached is not digestible.

18. Similarly, the Gujarat High Court in ***Ashokbhai Devsingbhai Chauhan Vs. Taraben Ashokbhai Chauhan, in R/criminal Revision Application No.920 of 2019 dated 11.11.2019*** and the Madras High Court in ***P. Amutha Vs. Gunsekaran, 2023(1) CivCC 586***, relying upon ***Bhagwant***'s case (*supra*), have also held Section 11 of the Pension Act to be inapplicable with respect to realisation of arrears of maintenance.

19. However, when a similar situation arose before a Co-ordinate Bench of this Court in ***Om Parkash Vs. Javitri Devi, 2018(1) DMC 462***, a contrary view was taken and it was held that the pension of a person is exempt from attachment for the realisation of the maintenance amount in view of Section 11 of the Pension Act and Section 60 of CPC. Speaking through Justice Jaishree Thakur, the following was observed:

“12. Section [125](#) of the Code of Criminal Procedure, 1973 has been enacted to ensure that a wife, minor child or old-age parents are maintained and not subjected to vagrancy and destitution. Grant of maintenance to the wife has been perceived as a measure of social justice by the Courts and the said section falls within the constitutional sweep of Article 15 (3) reinforced by Article [39](#) of the Constitution of India. It provides speedy remedy for supply of food, clothing, shelter to the deserted wife while ensuring that the husband fulfills his moral and legal obligation to support his family be it a minor child, wife or aged parents. So in that background there is no infirmity in the order of the District Judge awarding



*interim maintenance. The final maintenance has still to be settled after taking into account the capacity of the petitioner to pay maintenance as well his liabilities. **There is only an embargo, as enacted in Section 11 of the Pension Act and under section 60(1)(g), CPC, to attaching of pension in satisfaction of the said amount.***

20. This Court humbly disagrees with the view taken in *Om Parkash's* case (*supra*) for the reasons observed above. However, for the sake of clarity and for the convenience of the litigants, the following question is framed for reference of a Larger Bench, as there is an apparent conflict of opinion of this Court and the decision rendered by a Co-ordinate Bench in *Om Parkash's* case (*supra*):

Whether the pension of the judgement-debtor in execution proceedings, arising from litigation for maintenance, is exempt from the attachment to realise arrears in terms of Section 11 of the Pension Act and Section 60 of CPC?

21. In view of the above discussion, the present petition is disposed of in the following terms:

- (i) The impugned order dated 29.07.2023 is upheld to the extent of attachment of pension account of the petitioner for realisation of arrears of maintenance.
- (ii) However, the execution proceedings can only be pursued for arrears accrued in the year preceding the date of the filing of the execution



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petition i.e. for the period from 17.02.2018 to 16.02.2019.

(iii) The respondents will be at liberty to file a civil suit for recovery to recover rest of the amount that has fallen in arrears i.e. the maintenance amount accruing before 17.02.2018.

22. All the pending miscellaneous application(s), if any, shall stand disposed of.

**[HARPREET SINGH BRAR]
JUDGE**

18.10.2024
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

