

Court No. - 13

Case :- APPLICATION U/S 482 No. - 8366 of 2024

Applicant :- Shankh Saxena

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And Another

Counsel for Applicant :- Anil Kumar Tiwari,Rahul Mishra,Rajat

Bansal,Rushida Farheen

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

1. Heard learned counsel for the applicant, Sri Ajay Kumar Srivastava, learned AGA for the State of U.P. and perused the record.
2. By means of this application, the applicant has sought the following main relief(s):-

"WHEREFORE, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to quash the impugned order dated-31/08/2024, passed by the Learned Additional Principal Judge-07, Family Court, Lucknow, passed in Criminal Miscellaneous Case Number-973/2023 in Saumya Sinha vs. Shankh Kumar Saxena, U/s.125 Cr.P.C. annexed herewith as Annexure No.1 to this Application and may also dismiss the case so that the applicant may live peacefully under the protection of law."

3. Vide order, under challenge, dated 31.08.2024, the Additional Principal Judge-7, Family Court, Lucknow (hereinafter referred to as "trial court") entertained the application preferred by the opposite party No. 2/Somya Saxena under Section 125 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C.") registered as Case No. 973/2023 (Somya Sinha vs. Shankh Kumar Saxena).
4. Brief facts of the case in hand are to the effect that an application dated 04.01.2023, registered as Criminal Case No. 25/2023 (Somya Saxena vs. Shankh Saxena), under Section 125 Cr.P.C. was preferred by the opposite party No. 2 in the court of Principal Judge, Family Court, Lucknow and thereafter, on account of some typographical error, the opposite party No. 2/Somya Saxena preferred an application dated 16.05.2023 seeking withdrawal of the application under Section 125 Cr.P.C. preferred by her registered as Criminal Case No. 25 of 2023. The contents of the application dated 16.05.2023 are extracted hereunder:-

"प्रार्थना-पत्र वास्ते उपरोक्त वाद पर बल न दिये जाने / वापस लिये जाने हेतु:-

महोदय,

प्रार्थिनी का माननीय न्यायालय से निवेदन निम्नवत है:-

1- यह कि उपरोक्त वाद माननीय न्यायालय के समक्ष आज दिनांक 16/05/2023 को सुनवाई हेतु नियत है।

2- यह कि वाद उपरोक्त में कई त्रुटियां हो जाने के कारण प्रार्थिनी दूसरा नया वाद दाखिल करना चाहती है तथा उपरोक्त वाद वापस लेना चाहती है।

3- यह कि ऐसी स्थिति में वाद उपरोक्त पर बल न दिये जाने तथा वापस लिया जाना न्यायहित में उचित एवं आवश्यक है।

अतः माननीय न्यायालय से विनम्र निवेदन है कि उपरोक्त वाद को बलहीन करके वापस लिये जाने का आदेश पारित करने की कृपा करें।”

5. From a perusal of above quoted portion of the application dated 16.05.2023, it is apparent that on account of some typographical error, the opposite party No. 2/Somya Saxena, on account of some errors in the application under Section 125 Cr.P.C., moved an application before the court concerned permitting her to withdraw the application under Section 125 Cr.P.C. i.e. Case No. 25/2023 (Somya Saxena vs. Shankh Saxena) and this prayer was sought with an intention to file a fresh case under the said provision i.e. Section 125 Cr.P.C.

6. Thereafter, the Principal Judge, Family Court, Lucknow vide order dated 21.05.2023 after considering the averments made in above quoted application, dismissed the said case for want of prosecution and no liberty was granted to opposite party No. 2/Somya Saxena to file a fresh case under Section 125 Cr.P.C. The order dated 21.05.2023 reads as under:-

"21.05.2023

आज पत्रावली लोक अदालत में पेश हुई।

वादिनी की ओर से प्रार्थना पत्र ए 13 प्रस्तुत वाद में बल न दिये जाने का कथन किया। वादिनी का कथन है कि उपरोक्त वाद में त्रुटियां पाये जाने के कारण वह उक्त मुकदमा को नाटप्रेस करना चाहती है।

सुना एवं पत्रावली का अवलोकन किया। पत्रावली के अवलोकन से स्पष्ट है कि वादिनी द्वारा उक्त वाद धारा 125 दण्ड प्रक्रिया संहिता के तहत विपक्षी के विरुद्ध प्रस्तुत किया था। चूंकि वादिनी उक्त वाद में बल नहीं देना चाहती है। अतः वादिनी का वाद बल न दिये जाने के आधार पर निरस्त किये जाने योग्य है।

आदेश

प्रस्तुत वाद वादिनी द्वारा बल न दिये जाने के आधार पर निरस्त किया जाता है।

पत्रावली नियमानुसार दाखिल दफ्तर हो।”

7. After the aforesaid, the opposite party No. 2/Somya Saxena preferred a fresh case registered as Case No. 973 of 2023 (Somya Sinha vs. Shankh Kumar Saxena), in which, an objection was filed by the applicant raising the issue of maintainability of the case on the ground, in nutshell, to the effect that in view of principle of "Res Judicata", subsequent application under Section 125 Cr.P.C. is

not maintainable. In other words, it has been stated by the applicant before the court concerned that liberty was not granted to the opposite party No. 2/Somya Saxena to file a fresh case, as such, the instant application under Section 125 Cr.P.C. is neither entertainable nor maintainable and being so, without adjudicating the same on merits, it is liable to be dismissed.

8. The trial court thereafter considering the aforesaid facts including the ground aforesaid taken by the applicant herein that earlier application filed by the opposite party No. 2/Somya Saxena registered as Case No.25/2023 (Somya Saxena vs. Shankh Saxena) was dismissed as withdrawn without liberty to file a fresh case as also the observations made by this Court in the judgment passed in the case of *Shyam Bahadur Singh vs. State of U.P.* reported in **2023 AHC 914038** rejected the objection of the opposite party/applicant herein vide order impugned dated 31.08.2024 and entertained the application fixing 19.09.2024 as date for filing of objection. The relevant portion of the order dated 31.08.2024 is extracted hereunder:-

"सुना तथा पत्रावली का अवलोकन किया अवलोकन से विदित होता है कि उक्त वाद में विपक्षी द्वारा ये कहते हुए आपत्ति की गयी है कि प्रार्थिनी द्वारा पुनः तथ्यों को बदलते हुए पुनः उक्त प्रार्थना पत्र प्रस्तुत किया गया है।

प्रार्थिया द्वारा पूर्व में एक प्रार्थना पत्र अन्तर्गत धारा 125 सी०आर०पी०सी० प्रस्तुत किया गया था। जो उसके द्वारा इस आशय के साथ वापस लिया गया था, कि उक्त प्रार्थना पत्र में लिपिकीय त्रुटि है जिसके कारण से वह अपना वाद वापस लेना चाहती है।

उसके द्वारा पुनः प्रार्थना पत्र अन्तर्गत धारा 125 सी०आर०पी०सी० प्रस्तुत किया गया है। माननीय उच्च न्यायालय द्वारा अपने निर्णय श्याम बहादुर सिंह बनाम उत्तर प्रदेश सरकार 2023 AHC 914038 में अवधारित किया गया है कि..

"It may be noted that the solemn aim of the proceedings under Section 125 Cr.P.C. is to prevent vagrancy and destitution. Section 125 Cr.P.C. is piece of social legislation introduced in Cr.P.C. to grant a quick relief to the members of the society. At the same time, it may be noted that procedure which shall be adopted in such cases is a summary one. This is settled legal position that any matter which has been decided in a summary manner shall not have an effect of res-judicata, hence in my view this argument is misconceived. More so because this application has been.."

जिससे स्पष्ट है कि प्रार्थना पत्र अन्तर्गत धारा 125 सी०आर०पी०सी० पुनः योजित किया जा सकता है। यहाँ यह तथ्य समीचीन है कि प्रार्थिया द्वारा पूर्व में अपना प्रार्थना पत्र अन्तर्गत धारा 125 सी०आर०पी०सी० इस शर्त के साथ वापस लिया गया था कि वह पुनः नया प्रार्थना पत्र अन्तर्गत धारा 125 सी०आर०पी०सी० योजित कर सकती है।

अतः उक्त तथ्यों एवं परिस्थितियों में विपक्षी का प्रार्थना पत्र निरस्त किये जाने योग्य है।

आदेश

विपक्षी का प्रार्थना पत्र कागज सं० सी-13 निरस्त किया जाता है। पत्रावली वास्ते जवाबदावा / आपत्ति हेतु दिनांक 19.09.2024 को पेश हो।"

9. Impeaching the order impugned dated 31.08.2024, learned counsel for the applicant relying upon the judgment passed by the Hon'ble Apex Court in the

case of *Sarguja Transport Service vs. State Transport Appellate Tribunal, M.P., Gwalior, and others; AIR 1987 SC 88*, stated that second application under Section 125 Cr.P.C. filed by the opposite party No. 2/Somya Saxena was not maintainable, as such, the order dated 31.08.2024 is liable to be interfered with by this Court.

10. Learned AGA supported the impugned order dated 31.08.2024 on the basis of "aims and objects" of the provision i.e. Section 125 Cr.P.C.

11. Considered the aforesaid and perused the record.

12. For coming to the conclusion as to whether the impugned order dated 31.08.2024 is liable to be set-aside, this Court is of the opinion to first take note of the observations made by the Hon'ble Apex Court on the "aims and objects" of Section 125 Cr.P.C.

13. In the case of *Sanjeev Kapoor vs. Chandana Kapoor and others* reported in *(2020) 13 SCC 172*, the Hon'ble Apex Court while considering the applicability of Section 362 Cr.P.C. in relation to the proceedings/case instituted under Section 125 Cr.P.C., on the "aims and objects" of Section 125 Cr.P.C., observed as under:-

"23. Before we proceed to look into the legislative scheme of Section 125 CrPC, we need to notice few rules of interpretation of statutes when the court is concerned with the interpretation of a social justice legislation. Section 125 CrPC is a social justice legislation which orders for maintenance for wives, children and parents. Maintenance of wives, children and parents is a continuous obligation enforced. This Court had occasion to consider the interpretation of Section 125 CrPC in Badshah v. Urmila Badshah Godse [Badshah v. Urmila Badshah Godse, (2014) 1 SCC 188 : (2014) 1 SCC (Civ) 51] . In paras 13.3 to 18, the following has been laid down: (SCC pp. 196-98)

"13.3. Thirdly, in such cases, purposive interpretation needs to be given to the provisions of Section 125 CrPC. While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve "social justice" which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of the social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society.

14. *Of late, in this very direction, it is emphasised that the courts have to adopt different approaches in “social justice adjudication”, which is also known as “social context adjudication” as mere “adversarial approach” may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Prof. Madhava Menon describes it eloquently:*

‘It is, therefore, respectfully submitted that “social context judging” is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the Judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication. [Keynote address on “Legal Education in Social Context” delivered at National Law University, Jodhpur on 12-10-2005, available on <<http://web.archive.org/web/20061210031743/http://www.nlujodhpur.ac.in/ceireports.htm>> last accessed 25-12-2013.] ’

15. *The provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from “adversarial” litigation to social context adjudication is the need of the hour.*

16. *The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law.*

17. *Cardozo acknowledges in his classic [Benjamin N. Cardozo, *The Nature of Judicial Process* (Yale University Press, New Haven, 1921).]*

‘... no system of jus scriptum has been able to escape the need of it.’

and he elaborates:

‘It is true that codes and statutes do not render the Judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. ... There are hardships and wrongs to be mitigated if not avoided. Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning which, however obscure and latent, had nonetheless a real and ascertainable pre-existence in the legislator's mind. The process is, indeed, that at times, but it is often something more. The ascertainment of intention may be the least of a Judge's troubles in ascribing meaning to a statute. ...

Says Gray in his lectures [John Chipman Gray, *The Nature and Sources of the Law.*] :

“The fact is that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the Judges have to do is, not to determine that the legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present.”

18. The court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonise results with justice through a method of free decision — *libre recherche scientifique* i.e. “free scientific research”. We are of the opinion that there is a non-rebuttable presumption that the legislature while making a provision like Section 125 CrPC, to fulfil its constitutional duty in good faith, had always intended to give relief to the woman becoming “wife” under such circumstances. This approach is particularly needed while deciding the issues relating to gender justice. We already have examples of exemplary efforts in this regard. Journey from *Shah Bano* [Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556 : 1985 SCC (Cri) 245] to *Shabana Bano* [Shabana Bano v. Imran Khan, (2010) 1 SCC 666 : (2010) 1 SCC (Civ) 216 : (2010) 1 SCC (Cri) 873] guaranteeing maintenance rights to Muslim women is a classical example.

24. The closer look at Section 125 CrPC itself indicates that the court after passing judgment or final order in the proceedings under Section 125 CrPC does not become *functus officio*. The section itself contains express provisions where order passed under Section 125 CrPC can be cancelled or altered which is noticeable from Sections 125(1), 125(5) and 127 CrPC, which are to the following effect:

“125. Order for maintenance of wives, children and parents.—(1) If any person having sufficient means neglects or refuses to maintain—

(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 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 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, 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.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

127. Alteration in allowance.—*(1) On proof of a change in the circumstances of any person, receiving, under Section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.*

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent civil court, any order made under Section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under Section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that—

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage.

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order—

(i) in the case where such sum was paid before such order, from the date on which such order was made,

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance or interim maintenance, as the case may be after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom monthly allowance for the maintenance and interim maintenance or any of them has been ordered to be paid under Section 125, the civil court shall take into account that sum which has been paid to, or recovered by, such person as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of the said order.”

25. In Section 125 CrPC the expression used is "as the Magistrate may from time to time direct". The use of the expression "from time to time" has purpose and meaning. It clearly contemplates that with regard to the order passed under Section 125(1) CrPC, the Magistrate may have to exercise jurisdiction from time to time. Use of the expression "from time to time" is in exercise of jurisdiction of the Magistrate in a particular case. Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd Edn. defines "time to time" as follows:

"Time to time. As occasion arises."

26. The above legislative scheme indicates that the Magistrate does not become functus officio after passing an order under Section 125 CrPC, as and when the occasion arises the Magistrate exercises the jurisdiction from time to time. By Section 125(5) CrPC, the Magistrate is expressly empowered to cancel an order passed under Section 125(1) CrPC on fulfilment of certain conditions.

27. Section 127 CrPC also discloses the legislative intendment where the Magistrate is empowered to alter an order passed under Section 125 CrPC. Sub-section (2) of Section 127 CrPC also empowers the Magistrate to cancel or vary an order under Section 125. The legislative scheme as delineated by Sections 125 and 127 CrPC as noted above clearly enumerated the circumstances and incidents provided in the Code of Criminal Procedure where the court passing a judgment or final order disposing of the case can alter or review the same. The embargo as contained in Section 362 is, thus, clearly relaxed in the proceedings under Section 125 CrPC as indicated above.

28. The submissions which have been pressed by the learned counsel for the appellant were founded only on embargo of Section 362 and when embargo of Section 362 is expressly relaxed in the proceedings under Section 125 CrPC, we are not persuaded to accept the submission of the counsel for the appellant that the Family Court was not entitled to set aside and cancel its order dated 6-5-2017 in the facts and circumstances of the present case."

14. Following paragraphs of the judgment passed by the Hon'ble Apex Court in the case of **Anju Garg and another vs. Deepak Kumar Garg** reported in **2022 SCC OnLine SC 1314** would also be relevant on the "aims and objects" of the provision i.e. Section 125 Cr.P.C.

*"9. At the outset, it may be noted that Section 125 of Cr.P.C. was conceived to ameliorate the agony, anguish and financial suffering of a woman who is required to leave the matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children, as observed by this Court in *Bhuwan Mohan Singh v. Meena* (2015) 6 SCC 353. This Court in the said case, after referring to the earlier decisions, has reiterated the principle of law as to how the proceedings under Section 125 Cr.P.C have to be dealt with by the Court. It held as under:*

*"In *Dukhtar Jahan v. Mohd. Farooq* [(1987) 1 SCC 624 : 1987 SCC (Cri) 237] the Court opined that : (SCC p. 631, para 16)*

16. "... Proceedings under Section 125 [of the Code], it must be remembered, are of a summary nature and are intended to enable destitute wives and children, the latter whether they are legitimate or illegitimate, to get maintenance in a speedy manner."

8. A three-Judge Bench in *Vimala (K.) v. Veeraswamy (K.)* [(1991) 2 SCC 375 : 1991 SCC (Cri) 442], while discussing about the basic purpose under Section 125 of the Code, opined that : (SCC p. 378, para 3)

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."

9. A two-Judge Bench in *Kirtikant D. Vadodaria v. State of Gujarat* [(1996) 4 SCC 479 : 1996 SCC (Cri) 762], while adverting to the dominant purpose behind Section 125 of the Code, ruled that : (SCC p. 489, para 15)

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."

10. In *Chaturbhuj v. Sita Bai* [(2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356], reiterating the legal position the Court held : (SCC p. 320, para 6)

6. "... Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in *Capt. Ramesh Chander Kaushal v. Veena Kaushal* [(1978) 4 SCC 70 : 1978 SCC (Cri) 508] falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It 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. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in *Savitaben Somabhai Bhatiya v. State of Gujarat* [(2005) 3 SCC 636 : 2005 SCC (Cri) 787]."

11. Recently in *Nagendrappa Natikar v. Neelamma* [(2014) 14 SCC 452 : (2015) 1 SCC (Cri) 407 : (2015) 1 SCC (Civ) 346], it has been stated that it is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children".

10. This Court had made the above observations as the Court felt that the Family Court in the said case had conducted the proceedings without being alive to the objects and reasons, and the spirit of the provisions under Section 125 of the Code. Such an impression has also been gathered by this Court in the case on hand. The Family Court had disregarded the basic canon of law that it is the sacrosanct duty of the husband to provide financial support to the wife and to the minor children. The husband is required to earn money even by physical labour, if he is an able-bodied, and could not avoid his obligation, except on the legally permissible grounds mentioned in the statute. In *Chaturbhuj v. Sita Bai* (2008) 2 SCC 316, it has been held that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife, by providing her food, clothing, and shelter by a speedy remedy. As settled by this Court, Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children. It also falls

within the Constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution of India."

15. Regarding the issue involved in the instant case, this Court feels it appropriate to take note of the principle of "Res Judicata", as expressed by the Hon'ble Apex Court and also the judgments wherein it has been held that second petition/application claiming maintenance would be maintainable.

16. On the principle of "Res Judicata", the Hon'ble Apex Court in its latest judgment passed in the case of ***Prem Kishore & Others Vs. Brahm Prakash & Others*** reported in ***2023 SCC OnLine SC 356***, in paragraphs 37 and 38 held as under:-

"37. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) of the CPC can be summarized as follows:-

(i) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;

(ii) The defence made by the defendant in the suit must not be considered while deciding the merits of the application;

(iii) To determine whether a suit is barred by res judicata, it is necessary that (i) the 'previous suit' is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit; and

(iv) Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the 'previous suit', such a plea will be beyond the scope of Order 7 Rule 11 (d), where only the statements in the plaint will have to be perused.

(See: Srihari Hanumandas Totala v. Hemant Vithal Kamat. (2021) 9 SCC 99)

38. The general principle of res judicata under Section 11 of the CPC contain rules of conclusiveness of judgment, but for res judicata to apply, the matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue in the former suit. Further, the suit should have been decided on merits and the decision should have attained finality. Where the former suit is dismissed by the trial court for want of jurisdiction, or for default of the plaintiff's appearance, or on the ground of non-joinder or mis-joinder of parties or multifariousness, or on the ground that the suit was badly framed, or on the ground of a technical mistake, or for failure on the part of the plaintiff to produce probate or letter of administration or succession certificate when the same is required by law to entitle the plaintiff to a decree, or for failure to furnish security for costs, or on the ground of improper valuation, or for failure to pay additional court fee on a plaint which was undervalued, or for want of cause of action, or on the ground that it is premature and the dismissal is confirmed in appeal (if any), the decision, not being on the merits, would not be res judicata in a subsequent suit."

17. In the case of ***Nagendrappa Natikar v. Neelamma*** reported in (2014) 14 SCC 452, the Hon'ble Apex observed as under:-

"5. We notice, while the application under Section 127 CrPC was pending, the respondent wife filed OS No. 10 of 2005 before the Family Court, Gulbarga under Section 18 of the Act claiming maintenance at the rate of Rs 2000 per month. The claim was resisted by the petitioner husband contending that, in view of the compromise reached at between the parties in Miscellaneous Case No. 234 of 1992 filed under Section 125 CrPC, the respondent could not claim any monthly maintenance and hence the suit filed under Section 18 of the Act was not maintainable. The question of maintainability was raised as a preliminary issue. The Family Court held by its order dated 15-9-2009 that the compromise entered into between the parties in a proceeding under Section 125 CrPC would not be a bar in entertaining a suit under Section 18 of the Act.

6. The suit was then finally heard on 30-9-2010 and the Family Court decreed the suit holding that the respondent is entitled to a monthly maintenance of Rs 2000 per month from the defendant husband from the date of the filing of the suit.

7. Aggrieved by the said order, the petitioner took up the matter before the High Court by filing an appeal, being MFA No. 31979 of 2010, which was dismissed by the High Court by its judgment dated 28-3-2011 [*Nagendrappa Natikar v. Neelamma*, MFA No. 31979 of 2010, decided on 28-3-2011 (KAR)] , against which this SLP has been preferred.

8. *Shri Raja Venkatappa Naik*, learned counsel appearing for the petitioner husband submitted that suit filed under Section 18 of the Act is not maintainable in view of the order dated 3-9-1994, accepting the consent terms and ordering a consolidated amount towards maintenance under Section 125 CrPC.

9. We are in complete agreement with the reasoning of the Family Court and confirmed by the High Court that the suit under Section 18 of the Act is perfectly maintainable, in spite of the compromise reached at between the parties under Order 23 Rule 3 CPC and accepted by the Court in its order dated 3-9-1994.

10. Section 125 CrPC is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children. Section 125 is not intended to provide for a full and final determination of the status and personal rights of the parties, which is in the nature of a civil proceeding, though are governed by the provisions of CrPC and the order made under Section 125 CrPC is tentative and is subject to final determination of the rights in a civil court.

11. Section 25 of the Contract Act provides that any agreement which is opposed to public policy is not enforceable in a court of law and such an agreement is void, since the object is unlawful. The proceeding under Section 125 CrPC is summary in nature and intended to provide a speedy remedy to the wife and any order passed under Section 125 CrPC by compromise or otherwise cannot foreclose the remedy available to a wife under Section 18(2) of the Act."

18. In the judgment dated 23.05.2023 passed in ***Criminal Misc. Writ Petition No. 22529 of 2008 (Shyam Bahadur Singh vs. State of U.P. and another)***, this

Court, while dealing with the issue related to filing of second petition/application under Section 125 Cr.P.C., observed as under:-

"4. The main crux of the argument of the petitioner is that the respondent's wife never challenged the order of the revisional court by which the earlier order passed by the trial court rejecting the first application under Section 125 Cr.P.C. was affirmed, therefore, the order passed against the wife became final and therefore, the matter cannot be agitated again by filing another application under Section 125 Cr.P.C.; it is argued that the entire proceeding subsequently initiated by respondent no. 2 is barred by principle of constructive res-judicata and hit by the provisions of Constitution of India, therefore, it is liable to be quashed; it is further argued that the subsequent orders granting maintenance is passed ignoring the factual and legal positions; the learned trial court as well as the revisional court passed an illegal order, therefore the orders cannot be sustained.

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10. It may be noted that the solemn aim of the proceedings under Section 125 Cr.P.C. is to prevent vagrancy and destitution. Section 125 Cr.P.C. is a piece of social legislation introduced in Cr.P.C. to grant a quick relief to the members of the society. At the same time, it may be noted that procedure which shall be adopted in such cases is a summary one. This is settled legal position that any matter which has been decided in a summary manner shall not have an effect of res-judicata, hence in my view this argument is misconceived. More so because this application has been moved on the ground that there has been change in circumstances i.e. remarriage by the husband. Though the petitioner has objected to the fact of remarriage, however, this court in exercise of writ jurisdiction is not permitted to go into the disputed questions of fact.

11. There may be instances where the person who falls within the purview of section 125 Cr.P.C. as being one who has been neglected or refused maintenance during certain period of time. There may be some instances where a person, is for the time being able to maintain himself or herself loses her/his resources because of changed circumstances. In such cases a fresh right to claim maintenance may accrue. Legally the liability to maintain under section 125 Cr.P.C. is continuing one. In my view, when there is a change in circumstances entitling a person to be a claimant as per provisions of section- 125 Cr.P.C., he or she can very well apply for maintenance. If such an option is foreclosed, it shall frustrate the very purpose of section- 125 Cr.P.C. I do not find any good ground to interfere in the order of the trial court or of the revisional court in exercise of writ jurisdiction of this court.

19. In view of use of expression "from time to time" used in Section 125 Cr.P.C., in the facts of the instant case, it would also be useful to take note of expression "continuing wrong" and "recurring or successive wrong", as explained by the Hon'ble Apex Court.

20. In the case of ***Samruddhi Cooperative Housing Society Limited vs. Mumbai Mahalaxmi Construction Private Limited*** reported in ***(2022) 4 SCC 103***, the Hon'ble Apex observed as under:-

"14. Speaking for the three-Judge Bench, P.B. Gajendragadkar, J. (as the learned Chief Justice then was) observed that : (Balakrishna case [Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneswar Maharaj Sansthan, 1959 Supp (2) SCR 476 : AIR 1959 SC 798] , AIR p. 807, para 31)

"31. ... Does the conduct of the trustees amount to a continuing wrong under Section 23? That is the question which this contention raises for our decision. In other words, did the cause of action arise de die in diem as claimed by the appellants? In dealing with this argument it is necessary to bear in mind that Section 23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that Section 23 can be invoked."

(emphasis supplied)

The Court held that the act of the trustees to deny the rights of Guravs as hereditary worshippers and dispossessing them through a decree of the court was not a continuing wrong. Although the continued dispossession caused damage to the appellants, the injury to their rights was complete when they were evicted.

15. In CWT v. Suresh Seth [CWT v. Suresh Seth, (1981) 2 SCC 790 : 1981 SCC (Tax) 168] , a two-Judge Bench of this Court dealt with the question of whether a default in filing a return under the Wealth Tax Act amounted to a continuing wrong. E.S. Venkataramiah, J. (as the learned Chief Justice then was) observed that : (SCC pp. 798-99, para 11)

"11. ... The distinctive nature of a continuing wrong is that the law that is violated makes the wrongdoer continuously liable for penalty. A wrong or default which is complete but whose effect may continue to be felt even after its completion is, however, not a continuing wrong or default. It is reasonable to take the view that the court should not be eager to hold that an act or omission is a continuing wrong or default unless there are words in the statute concerned which make out that such was the intention of the legislature. In the instant case whenever the question of levying penalty arises what has to be first considered is whether the assessee has failed without reasonable cause to file the return as required by law and if it is held that he has failed to do so then penalty has to be levied in accordance with the measure provided in the Act. When the default is the filing of delayed return the penalty may be correlated to the time lag between the last day for filing it without penalty and the day on which it is filed and the quantum of tax or wealth involved in the case for purposes of determining the quantum of penalty but the default however is only one which takes place on the expiry of the last day for filing the return without penalty and not a continuing one. The default in question does not, however, give rise to a fresh cause of action every day. Explaining the expression "a continuing cause of action" Lord Lindley in Hole v. Chard Union [Hole v. Chard Union, (1894) 1 Ch 293 : 63 LJ Ch 469 : 70 LT 52 (CA)] observed : (Ch pp. 295-96)

"... What is a continuing cause of action? Speaking accurately, there is no such thing; but what is called a continuing cause of action is a cause of action which arises from the repetition of acts or omissions of the same kind as that for which the action was brought. "

(emphasis supplied)

16. The Court further provided illustrations of continuous wrongs : (Suresh Seth case [CWT v. Suresh Seth, (1981) 2 SCC 790 : 1981 SCC (Tax) 168] , SCC p. 800, para 17)

"17. The true principle appears to be that where the wrong complained of is the omission to perform a positive duty requiring a person to do a certain act the test to determine whether such a wrong is a continuing one is whether the duty in question is one which requires him to continue to do that act. Breach of a covenant to keep the premises in good repair; breach of a continuing guarantee, obstruction to a right of way, obstruction to the right of a person to the unobstructed flow of water, refusal by a man to maintain his wife and children whom he is bound to maintain under law and the carrying on of mining operations or the running of a factory without complying with the measures intended for the safety and well-being of workmen may be illustrations of continuing breaches or wrongs giving rise to civil or criminal liability, as the case may be, de die in diem."

17. In *M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das [M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das, (2020) 1 SCC 1]* , a Constitution Bench of this Court [of which one of us (D.Y. Chandrachud, J.) was a part] examined the precedents with regard to a continuing wrong. The Court observed that : (SCC p. 369, para 343)

"343. The submission of *Nirmohi Akhara* is based on the principle of continuing wrong as a defence to a plea of limitation. In assessing the submission, a distinction must be made between the source of a legal injury and the effect of the injury. The source of a legal injury is founded in a breach of an obligation. A continuing wrong arises where there is an obligation imposed by law, agreement or otherwise to continue to act or to desist from acting in a particular manner. The breach of such an obligation extends beyond a single completed act or omission. The breach is of a continuing nature, giving rise to a legal injury which assumes the nature of a continuing wrong. For a continuing wrong to arise, there must in the first place be a wrong which is actionable because in the absence of a wrong, there can be no continuing wrong. It is when there is a wrong that a further line of enquiry of whether there is a continuing wrong would arise. Without a wrong there cannot be a continuing wrong. A wrong postulates a breach of an obligation imposed on an individual, whether positive or negative, to act or desist from acting in a particular manner. The obligation on one individual finds a corresponding reflection of a right which inheres in another. A continuing wrong postulates a breach of a continuing duty or a breach of an obligation which is of a continuing nature. ...

Hence, in evaluating whether there is a continuing wrong within the meaning of Section 23, the mere fact that the effect of the injury caused has continued, is not sufficient to constitute it as a continuing wrong. For instance, when the wrong is complete as a result of the act or omission which is complained of, no continuing wrong arises even though the effect or damage that is sustained may enure in the future. What makes a wrong, a wrong of a continuing nature is the breach of a duty which has not ceased but which continues to subsist. The breach of such a duty creates a continuing wrong and hence a defence to a plea of limitation."

(emphasis supplied)"

21. In the case of ***Jaihind Sahakari Pani Purvatha Mandali Ltd. v. Rajendra Bandu Khot and others*** reported in ***2019 SCC OnLine Bom 13271***, the High Court of Bombay observed as under:-

"8. The Supreme Court has explained the difference between a continuous wrong and recurring or successive wrongs in the case of Union of India v. Tarsem Singh, (2008) 8 SCC 648. A continuing wrong is a single wrong causing a continuing injury. In case of a continuing wrong, the grievance essentially is about an act which creates a continuous source of injury and renders the doer of that act responsible and liable for continuance of that injury. The injury is not complete when the act is committed; it continues even thereafter; and so long as it does, the cause of action itself continues. A recurring or successive wrong, on the other hand, occurs when successive acts, each giving rise to a distinct and separate cause of action, are committed. Each act, in itself wrongful, constitutes a separate cause of action for sustaining a claim or a complaint. It is important to bear in mind in this context the distinction between an injury caused by a wrongful act and the effect of such injury. What is to be seen is whether the injury itself is complete or is continuous. If the injury is complete, the cause of action accrues and is complete; the clock starts ticking for the purposes of limitation, notwithstanding the fact that the effect of such injury continues even thereafter. For example, let us take the case of an occupant of a house who is driven out of it. The injury is complete with the act of throwing him out, though the effect of that injury namely, his being unable to use or occupy the house, continues even thereafter. Take, however, the case of a person who is detained in a house and not allowed to roam about. The act of detention is the one which causes an injury : This injury, however, is a continuing injury, since the injury here consists in being unable to move about. This injury continues and since the injury itself continues, the wrong is a continuous wrong and the cause of action, a continuing cause of action. Take, on the other hand, the case of a person who is barred from entering a house he is entitled to enter. When he is barred for the first time, an injury follows, and a cause of action thereby accrues. Each successive day on which he is so barred gives rise to a fresh and distinct cause of action, making it a case of recurring/successive wrongs.

9. In service jurisprudence, this distinction (i.e. the distinction between a continuing wrong and a recurring one) becomes important particularly from the point of view of relief. In M.R. Gupta v. Union of India, (1995) 5 SCC 628, the Supreme Court has explained it succinctly. The appellant before the court in that case was a workman, whose grievance was that his wage fixation was not in accordance with the applicable rules. He asserted that the wrong was a continuous one. The court held that his cause of action was a recurring cause of action rather than a continuous one. Each time he was paid a salary which was not computed in accordance with the rules, a cause of action accrued unto him. The Court held as follows (SCC pp.629-30):

“So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery” of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time-barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits

his claim is justified. Similarly any other consequential relief claimed by him, such as, promotion etc., would also be subject to the defence of laches etc. to disentitle him to those reliefs."

10. This law has been reiterated and summarised by the Supreme Court in Tarsem Singh's case in the following words (Para 7 @ P651 of SCC):

"7. To summarise, normally a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

22. For coming to the conclusion, this Court considered the following facts and aspects of the instant case.

(i) First case i.e. Case No. 25/2023 (Somya Saxena vs. Shankh Saxena) filed by opposite party No. 2/Somya Saxena was dismissed vide order dated 21.05.2023 passed on an application preferred by her for withdrawal of case with intention to file fresh case and the order dated 21.05.2023 indicates that the same was dismissed for want of prosecution.

(ii) The expression "from time to time" used in Section 125 Cr.P.C. and the principles related to "Res Judicata", "continuing wrong" and "recurring wrong or successive wrong" and also the "aims and objects" related to preferring an application under Section 125 Cr.P.C., as explained in the judgments, referred above.

(iii) The application under Section 125 Cr.P.C. should be decided summarily as per the procedure prescribed under the Code of Civil Procedure, 1908 (in short "CPC") by the Family Court. Section 10 of the Family Courts Act, 1984 (in short "Act of 1984") provides that provision of CPC shall be applicable to the suits

and proceedings other than those under Chapter IX of Cr.P.C. i.e. provisions related to maintenance of wives, children and parents.

(iv) The applicant is under obligation to maintain his wife (opposite party No. 2/Somya Saxena), which is his continuing duty.

(v) As per Hon'ble Apex Court, refusal by a man to maintain his wife and children whom he is bound to maintain under law, would be covered under maxim "de die in diem", which means "doing something everyday".

23. In view of the observations made in the judgments passed in the case of *Sanjeev Kapoor (supra)*, *Anju Garg (supra)*, *Prem Kishore (supra)*, *Nagendrappa Natikar (supra)*, *Shyam Bahadur Singh (supra)*, *Samruddhi Cooperative Housing Society Limited (supra)* and *Jaihind Sahakari Pani Purvatha Mandali Ltd. (supra)*, referred above, this Court is of the view that the judgment passed in the case of *Sarguja Transport Service (supra)* would not apply in this case.

24. Upon due consideration of the aforesaid, this Court is of the firm view that second application filed by the opposite party No. 2/Somya Saxena under Section 125 Cr.P.C., though the earlier was dismissed without providing liberty to file fresh, would be maintainable and the order dated 31.08.2024 is not liable to be interfered with by this Court.

25. Having observed above, this Court finds no force in the present application. It is accordingly *dismissed*.

26. The Court records the valuable assistance given by Ms. Urmish Shankar, Research Associate, attached with me in drafting this judgment and finding out case laws applicable in the present case.

Order Date :- 18.9.2024

Arun/-