

Neelesh Kumar Shukla Vs Renuka Shukla

Court: Chhattisgarh High Court

Date of Decision: July 28, 2023

Acts Referred: Code Of Criminal Procedure, 1973 " Section 125, 127, 397, 401

Hon'ble Judges: Rajani Dubey, J

Bench: Single Bench

Advocate: Samiksha Gupta, Himanshu Pandey, Vivek Sharma

Final Decision: Disposed Of

Judgement

1. The applicant/husband has filed the instant revision under Section 397 read with Section 401 of Code of Criminal Procedure (CrPC) challenging the

legality and validity of the order dated 12.4.2022 passed by Principal Judge, Family Court, Bilaspur in MJC No.225/2019 rejecting the application of the

applicant for dismissal of the proceedings under Section 125 of CrPC instituted by the respondent/wife.

2. Learned counsel for the applicant submits that the impugned order is perverse and not sustainable in law. The learned Court below failed to

appreciate that the principles of res judicata and estoppel are applicable in criminal proceedings as well and there is no dearth of authority in this

regard including the case of Sanjeev Kapoor Vs. Chandana Kapoor reported in (2020) 13 SCC 172. The respondent is residing in Bilaspur and earlier

she had filed an application under Section 125 of CrPC before the Family Court at Durg in which she was granted maintenance @ Rs.2,000/- per

month vide order dated 20.12.2005 (Annexure P/2). For alteration of the said amount, she ought to have filed appropriate application before the Family

Court, Durg only whereas she filed a fresh application under Section 125 of CrPC seeking maintenance from the applicant before the Family Court,

Bilaspur, which was not at all maintainable. It is further submitted that no can can be allowed to abuse the process of Court of law and here in the

present case, such abuse is writ large. When the law requires that for alternation of amount of maintenance, the application has to be filed before the

same Court which granted maintenance, the application filed by the respondent/wife before the Family Court, Bilaspur was liable to be dismissed on

the ground of maintainability. Hence, the impugned order is liable to be set aside. Reliance has been placed on the judgment dated 18.8.2022 of the

High Court of Delhi in the matter of Sunita and another Vs. Vijay Pal @ Mohd. Sabir and another in Crl.Rev.P.No.161/2018.

3. On the other hand, learned counsel appearing for the respondent/wife submits that the applicant has obtained ex-parte interim order on 15.6.2022

from this Court without disclosing the true and correct facts and misrepresenting the respondent whereas address of the respondent is same and the

parties are proceeding with the same address in different courts. The said interim order has already expired on 15.12.2022 in light of the order of the

Hon'ble Supreme Court in Asian Resurfacing of Road Agency Pvt. Ltd. Vs. CBI, (2018) 16 SCC 299, but the respondent is still facing hardship

due to non-payment of maintenance amount. The impugned order passed by the Family Court is just and proper The instant revision has been filed

against an interlocutory order which is itself not maintainable before this Court, hence the same is liable to be dismissed.

Reliance has been placed on the decision of this Court in the matter of Shailendra Nath Vs. Archana Nath reported in 2017 SCC OnLine Chh 1621

and the order dated 7.5.2014 of this Court passed in Criminal Revision No.348/2012 in the matter of Smt. Rani Mahalka Nisha Khan Vs. Abdul Javed

Khan.

4. Heard learned counsel for the parties and perused the material available on record.

5. Learned trial Court observed in the impugned order dated 12.4.2022 as under:

6. The applicant has filed copy of the order dated 20.12.2005 passed by the II Additional Principal Judge, Durg in MJC No.379/2005 as Annexure P/2

whereby the learned Family Court allowing the application under Section 125 of CrPC of the respondent/wife granted her maintenance @ Rs.2,000/-

per month. The applicant has also filed application moved by the respondent/wife before the Family Court, Bilaspur under Section 125 of CrPC. It is

clear from this application that the respondent/wife again filed this application on 22.2.2019 and the learned Family Court on the ground that the

applicant/husband did not make any averment in his written statement about passing of the maintenance order in favour of the respondent by II

Additional Principal Judge, Durg or produce any such document, dismissed the application of the applicant regarding maintainability of the application

under Section 125 of CrPC filed by the respondent.

7. Learned Family Court has to see that the issue raised by the applicant is a legal issue and it is well settled that proceedings under Section 125 of

CrPC are quasi civil proceedings. It is clear from the order dated 20.12.2005 that in her application filed by the respondent/wife in the previous case

before the Family Court, Durg, she claimed Rs.3,000/- per month from her husband/applicant as maintenance, which was partly allowed by the

learned Family Court, Durg and she was granted maintenance @ Rs.2,000/- per month. However, she again filed an application under Section 125 of

CrPC before the Family Court, Bilaspur on 22.2.2019 and claimed Rs.30,000/- per month as maintenance.

When one competent Court has decided the application under Section 125 of CrPC of the respondent/wife, then subsequent application under Section

125 of CrPC shall not be maintainable since the same has been adjudicated upon merits previously. The proper legal recourse available to the

respondent/wife is to file an application under Section 127 of CrPC seeking alternation of the maintenance amount in view of change in circumstances

before the appropriate Court. The case will be different if the petition under Section 125 of CrPC is dismissed for non-prosecution or otherwise. But in

this case, it is clear from the order dated 20.12.2005 passed in MJC No.379/2005 that the competent Court decided the application of the

respondent/wife on merits and allowed the same partly in her favour. Section 127 of CrPC provides as under:

Section 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 a 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 the 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.

8. In the matter of Sunita and another (supra), the High Court of Delhi observed in para 18 of its judgment as under:

“18. The doctrine of res judicata has evolved to prevent multiplicity of litigation regarding the same issues in question and puts an end to a finally

adjudicated issue ensuring finality in litigation. This ensures abuse of process of law and disentitles a litigant to access courts repeatedly agitating

issues which have become final between the parties after being adjudicated on merits by a court of law. It is to prevent infinitely harassing an

opponent by filing repetitive suits involving same cause of action or law. The matter in question in present case has been conclusively determined on

merit. For seeking any further relief in case of change in circumstances, the petitioner has to take recourse to Section 127 Cr.P.C.

9. In the given facts and circumstances of the present case, the same doctrine of res judicata also applies here. If the respondent/wife wants alteration

of the maintenance amount on the ground of change in circumstances, then she has to file an application under Section 127 of CrPC before the

competent authority. So, the impugned order dated 12.4.2022 passed by learned Family Court, Bilaspur is not sustainable.

10. On the basis of aforesaid discussions, the impugned order dated 12.4.2022 of the Family Court, Bilaspur is hereby set aside. Consequently, the

application filed by the applicant/husband is allowed and the application under Section 125 of CrPC filed by the respondent/wife stands dismissed. The

respondent/wife is at liberty to file application under Section 127 of CrPC, if so desires, before the competent Court. The applicant is also directed to

pay the maintenance @ Rs.2,000/- per month, as ordered earlier by the Family Court, Durg, to the respondent/wife until further final or interim orders

passed by the competent Court. This apart, the applicant is also directed to pay Rs.10,000/- as cost of this petition to the respondent/wife.

11. With the aforesaid observations, the instant revision stands disposed of.