

## P. Vaithi Vs Kanagavali and Tamil Selvai

**Court:** Madras High Court

**Date of Decision:** Feb. 2, 2010

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 125, 125(3), 128

**Citation:** (2010) 1 Crimes 810 : (2010) 1 LW(Cri) 574 : (2011) 1 RCR(Criminal) 220 : (2011) 1 RCR(Criminal) 220

**Hon'ble Judges:** S. Nagamuthu, J

**Bench:** Single Bench

**Advocate:** S. Ayyathurai, for the Appellant; R. Nalliyappan, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

S. Nagamuthu, J.

In M.C. No. 29/2004, the Family Court, Salem, directed the Petitioner to pay a sum of Rs. 750/- p.m. to the 1st

Respondent and Rs. 500/- p.m. to the 2nd Respondent towards their maintenance u/s 125 of Code of Criminal Procedure. The said order, dated

17.11.2006 has become final. However, the said amount was not paid. Seeking to enforce the same, the Respondents filed C.M.P. No. 146/2008

before the lower court u/s 128 of Code of Criminal Procedure By an order dated 22.10.2009, the Family Court directed the Petitioner to pay the

amount and also cautioned the Petitioner that an order of attachment would be passed in the event of failure of the Petitioner to pay the amount.

The Petitioner is aggrieved by the said order. Thus, he is before this Court with this revision.

2. The only contention raised by the learned Counsel for the Petitioner is that such a petition for enforcement could be filed only in respect of

arrears of maintenance for a period of one year. He would further submit that since, in this case, C.M.P. No. 146/2008 was filed covering a

period exceeding one year, the court ought to have dismissed the application as barred by limitation. To substantiate his contention, the learned

Counsel relies on judgments in Yoosuf Rawther v. Ashref and Anr. reported in 1997 CRILJ 4313 and Jagannath Patra Vs. Purnamashi Saraf and

Another,

3. The learned Counsel for the Respondents would however oppose this petition. According to him, the limitation provided u/s 125(3) is not

applicable to the facts of the present case.

4. I have considered the rival submissions made on either side and also perused the records.

5. At the outset, I have to state that a proceeding u/s 125 Code of Criminal Procedure is quasi civil and quasi criminal. In so far as it decides the

civil rights of the parties to claim maintenance, it is civil in nature. When the order is not obeyed by the person against whom the same has been

made, then the court is empowered to impose a punishment of imprisonment of one month for each breach. To that extent, the proceeding is

criminal. To put it comprehensively, I have to state that the proceeding is quasi civil and quasi criminal.

6. After an order is passed directing to pay maintenance, the party in whose favour such an order has been passed has got two options to work

out to recover the arrears from the other. He can choose to approach the court u/s 125(3) Code of Criminal Procedure requesting the court to

punish the defaulter by imposing appropriate imprisonment. On the other hand, he can also approach the court u/s 128 of Code of Criminal

Procedure seeking to recover the amount due under the maintenance order. A comparison of Sections 125(3) and 128 of Code of Criminal

Procedure would keep things beyond any pale of doubt that in so far as the proceeding u/s 125(3) is concerned, the statute has prescribed a

period of limitation of one year, whereas in respect of a proceeding u/s 128 of Code of Criminal Procedure, there is no limitation provided at all.

This is because, while exercising the power u/s 125(3) Code of Criminal Procedure the action being essentially a criminal in nature, resulting in

punishment of imprisonment, the legislature has perhaps, thought it fit to provide such a period of limitation of one year to file a petition. Since,

while enforcing an order u/s 128 of Code of Criminal Procedure for recovery of the amount, there is no question of straight away imposing such a

punishment of imprisonment and that may be the reason for the legislature not to provide for such a period of limitation. Therefore, to put it in

nutshell, for initiating a proceeding for enforcing an order by invoking Section 128 of Code of Criminal Procedure, absolutely, I find no provision

providing for limitation as it is provided in respect of proceedings u/s 125(3) of Code of Criminal Procedure. In the case on hand, the petition was

filed u/s 128 of Code of Criminal Procedure. Though it was filed beyond one year, in my considered opinion, the lower court was right in

entertaining the same as the same is not barred by any limitation.

7. Now the judgment relied on by the learned Counsel for the Petitioner in Yoosuf Rawther v. Ashref and Anr. reported in 1997 CRIL.J .4313 as

cited supra requires to be considered. In that judgment, the Court had occasion to consider the period of limitation provided only in respect of a

petition filed u/s 125(3) of Code of Criminal Procedure. The Court was not inclined to give any findings in respect of the proceedings u/s 128

Code of Criminal Procedure. Therefore, the views expressed in the said judgment have no relevance to the Section 128 of Code of Criminal

Procedure at all. For similar reason, the judgment in Jagannath Patra Vs. Purnamashi Saraf and Another, also does not come to the help of the

Petitioner.

8. In view of all the above, the revision fails and the same is accordingly dismissed. Consequently, connected Miscellaneous Petition is also closed.

I clarify that the Petitioner is at liberty to enforce the maintenance order without being bound by the limitation provided u/s 125(3) of Code of

Criminal Procedure.