

HIGH COURT OF KARNATAKA,

Bench : JUSTICE ANIL B KATTI

Date of Decision: 2nd April 2024

CRIMINAL REVISION PETITION NO. 100464 OF 2023 (397)

SMT. SUDHABAI W/O LATE P. SESHAGIRIRAO ...PETITIONER

VERSUS

SMT. RASHMI V. RAO (Party-In-Person) ...RESPONDENT

Legislation:

Sections 12, 20, 28 of the Protection of Women from Domestic Violence Act, 2005

Sections 125, 397, 401 of the Criminal Procedure Code, 1973

Subject: Criminal revision petition challenging the first appellate court's decision regarding recovery of arrears of interim maintenance and interest from the assets of the deceased husband under the Domestic Violence Act and Cr.P.C.

Headnotes:

Recovery of Arrears of Maintenance – Enforcement against Deceased's Estate – Criminal Revision Petition challenging the first appellate court's decision to allow recovery of maintenance arrears from deceased's assets – Trial court dismissed maintenance enforcement against deceased – Appellate court allowed recovery from deceased's assets, including service benefits – High Court upholds recovery right, but sets aside interest awarded on arrears. [Paras 1-19]

Enforcement of Interim Maintenance Order Against Deceased's Estate – Legal Position – Held – Interim maintenance order can be enforced against deceased's estate – Entitlement of the widow to recover arrears of maintenance from husband's assets reaffirmed – Maintenance arrears

deemed recoverable from husband's service benefits or assets inherited from him. [Paras 13-14, 17]

Interest on Maintenance Arrears – Legal Consideration – High Court sets aside 12% interest on arrears of maintenance awarded by the appellate court – Considered the financial position and circumstances of the mother-in-law (respondent No.3), who has not received any service benefits and is at an advanced age – Interest deemed not legally sustainable. [Paras 18-19]

Final Decision – Partial Allowance of Revision Petition – High Court partially allows revision petition – Confirms entitlement of petitioner for maintenance arrears but sets aside grant of interest – Judgment and order of first appellate court modified accordingly.

Referred Cases: None.

Representing Advocates:

Petitioner: Sri S.S. Beturmath

ORDER

Revision petitioner/ respondent No.3 feeling aggrieved by the judgment of first appellate Court on the file of II Addl. Dist. & Sessions Judge, Dharwad & Special Court for Trial of the offences under the P.O.C.S.O. Act and SC. & S.T. (P.O.A.) Act in Criminal Appeal No. 100/2018, preferred this revision petition.

2. Parties to the revision petition are referred with their ranks as assigned in the trial Court for the sake of convenience.
3. Heard the arguments of both sides.
4. After hearing the arguments of both sides and on perusal of trial Court records, so also the impugned judgment under appeal, the following points arise for consideration.

- 1) *Whether the impugned order under revision passed by the first appellate Court in setting aside the order of the trial Court on the file of Prl. Civil Judge & JMFC, Dharwad in C.C. No. 123/2017 dated 05.11.2018, is perverse, capricious and legally not sustainable?*
- 2) *Whether interference of this Court is required?*
5. The petitioner had filed Crl. Misc. No. 123/2017 against the respondent No.1 and others seeking monetary reliefs in terms of Section 20 and 28 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'P.W.D. Act' for brevity) read with Sec. 125 of Cr.P.C. for recovery of maintenance amount of Rs.7,05,600/- with interest which is due from 29.08.2009 to 12.04.2014 as per the order passed in Crl. Misc. No. 85/2009 on the file of JMFC-I Court, Hubballi. The marriage of petitioner with respondent No.1-Venkatesh was solemnized on 28.06.2007. The respondents No.2 and 3 are the parents of respondent No.1. The petitioner was residing with respondents at Mumbai after the marriage. After some time of marriage there was misunderstanding between the spouse and the respondents started abusing and dominating the petitioner, ultimately she was driven out from matrimonial home. The petitioner had filed Crl. Misc. No. 85/2009 on the file of JMFC-I, Hubballi. In the said case there was interim order of maintenance of Rs.10,000/- per month vide order dated 13.01.2012. Thereafter, there was compromise between the petitioner and respondent No.1 and the petitioner agreed to withdraw the petition in Crl. Misc. No. 85/2009 which was closed as 'compromised' on 12.04.2014. However, the petitioner soon realized that the respondent No.1 took her back only to avoid paying arrears of maintenance and not intended to lead marital life with her. The respondents continued ill treatment to the petitioner and again she was driven out from the matrimonial home. In the meantime, the respondent No.1 passed away on 23.05.2017. He was serving as Manager in **E-Clerx**, Mumbai drawing salary of Rs.2,00,000/- per month. He has also made several investments in the bank as well as financial institutions for himself and also for his parents. The petitioner being widow of deceased respondent No.1, is entitled for attachment of assets of respondent No.1 for recovery of interim maintenance. Therefore, prayed for allowing the petition.
6. Respondents No.2 and 3 have appeared through their counsel and the respondent No.3 had filed objections admitting relationship of petitioner with respondent No.1 who died due to heart attack on 23.05.2017 at Singapore. It is also further admitted that maintenance amount of Rs.10,000/- was

awarded in Crl. Misc. No. 85/2009. It is further contended that the compromise between the petitioner and respondent No.1 was not a conditional compromise and the petitioner did not recover arrears of maintenance during the lifetime of respondent No.1. The petitioner herself got stayed release of death benefits as per interim order dated 13.06.2017 in Crl. Misc. No. 17/2017. The recovery petition itself is not maintainable against dead respondent No.1 and in view of the compromise between the petitioner and respondent No.1, the petitioner cannot enforce recovery of maintenance amount. Therefore, prayed for dismissing the petition.

7. The trial Court by common order in Crl. Misc. No. 123/2017 and Crl. Misc. No. 124/2017 dated 05.11.2018 dismissed the petitions as not maintainable in view of the compromise between the petitioner and respondent No.1 and the arrears of maintenance cannot be enforced against a dead person. The petitioner has challenged said order before the first appellate Court in Crl. A. No. 100/2018. The first appellate Court after hearing the arguments of both sides and on appreciation of the material evidence, allowed the appeal, set aside the order of trial Court and held that petitioner is entitled to recover interim maintenance of Rs.10,000/- per month from 29.09.2009 to 12.04.2017 with interest at 12% p.a. from the date on which the said amount falls due from the assets including the service benefits left behind by the respondent No.1.
8. The genesis of dispute between the parties arose from initiation of proceedings by petitioner in Crl. Misc. No. 85/2009 U/s 12 of P.W.D. Act. The trial Court by order dated 08.09.2009 passed exparte interim order of maintenance of Rs.15,200/- Ex.P.9. On appearance of respondent and after hearing both sides, the trial Court has modified the order of maintenance and reduced interim maintenance amount to the extent of Rs.10,000/- per month vide order dated 13.01.2012. The petitioner had also obtained the decree of Restitution of Conjugal Rights on the file of Prl. Judge, Family Court, Hubballi in M.C. No. 202/2012 vide judgment dated 20.11.2014. It is thereafter a joint memo was filed on 12.04.2014 seeking reference to the Lok Adlaath. It is stated that the claim of the parties against each other does not survive and exist and hence the petitioner and respondent No.1 intended to seek disposal of the matter. The matter was referred to Lok Adalath and in the Lok Adalath pursuant to the decree in M.C. No. 202/2012, petitioner and respondent No.1 agreed to live together jointly and therefore petition in Crl.

Misc. No. 85/2009 was closed as settled. The records also would go to show that petitioner had filed M.C. No. 153/2016 on 25.06.2016-Ex.P.4 on the file of Family Court, Hubballi for seeking decree of divorce. In view of the death of respondent No.1 on 23.05.2017, the said petition was closed. The petitioner has filed Crl. Misc. No. 123/2017 to recover the arrears of maintenance from 08.09.2009 to 12.04.2014 amounting to Rs.7,05,600/-.

9. Learned counsel for respondent No.3 has argued that no order can be passed against a dead person. Secondly, petitioner herself filed memo dated 16.10.2017 in Crl. Misc. No. 85/2009 'as not pressed'. Thirdly, petitioner cannot revive her claim in a closed case which is legally not permissible and lastly the testamentary petition, i.e., suit, is filed by the petitioner in O.S. No. 175/2017 before the Hon'ble Bombay High Court. Therefore, contended that recovery petition itself is not maintainable as was rightly held by the trial Court.
10. Per contra, petitioner/ party-in-person has argued that her husband-respondent No.1 persuaded her that he intended to join the company of petitioner in terms of the decree in M.C. No. 202/2012 provided she withdraw her petition in Crl. Misc. No. 85/2009. It is because of such condition put by the respondent No.1 and the petitioner who wished to lead her marital life with respondent No.1, agreed to withdraw the petition filed by her in Crl. Misc. No. 85/2009. The petitioner has not given up her accrued right of recovery of maintenance amount, since respondent No.1 was duty bound to provide maintenance amount due to the petitioner. The respondent No.1 was never intended to lead marital life with the petitioner, but only to deprive the petitioner from reaping the benefit of maintenance amount granted to the petitioner offered to join petitioner. Therefore, she has got every right to recover arrears of maintenance amount as she has no any independent source of income and she has been driven out of the matrimonial home.
11. The petitioner/party-in-person has contended that the revision petition itself is not maintainable. In support of such contention, she relied on the order of Hon'ble Rajasthan High Court, Bench at Jaipur in ***Vishal Kochar son of Harish Vs. Smt. Pulkit Sahni wife of Vishal Kochar (S.B. Criminal Revision Petition No. 462/2021 dated 22.04.2022)***. In the said case before the Rajasthan High Court, it was a case arising out of maintenance

proceedings U/s 125 Cr.P.C. and therefore it was held that “grant of maintenance amount pending disposal of the maintenance petition U/s 125 Cr.P.C., the revision petition is not maintainable.” Whereas the present proceeding has arisen out of the provisions under the P.W.D. Act. In **Vishal Kochar** (supra), it has been observed at paragraph Nos.11 and 12 as under:

“11. So far as the provisions of the Act of 2005 are concerned, under Section 12 of the Act an aggrieved person can file an application to seek various reliefs including monetary relief i.e. relief of maintenance under section 20 of the Act. Section 23 of the Act of 2005 empowers the Magistrate to pass an interim order as he deems just and proper in any proceeding pending before him. Section 29 of the Act provides for an appeal to the Court of Session against an order passed under this Act and it does not exclude an interim order from its ambit.

12. *The order of interim maintenance under the provisions of Act 2005 does not terminate the proceedings finally. The matter remains sub judice and rights and liabilities of the parties are not decided in finality. Though, in such circumstances, the interim order of maintenance is in the nature of interlocutory order, yet it is appealable as per Section 29 of the Act 2005. In the case of [Amir Khan vs State of Rajasthan and Others](#) (supra), it was held that such interim order is appealable under Section 29 of the Act of 2005, and a criminal revision petition is maintainable against the final order of appellate Court. This judgment stands on different set of laws i.e., Act 2005 and does not deal with the question of maintainability of revision against interlocutory order, hence, it cannot be applied with regard to the orders of interim maintenance passed under Section 125(1) of Cr.P.C.”*

The Hon'ble Rajasthan High Court, Bench at Jaipur, having so observed has held that, in view of the appeal remedy as being provided under the P.W.D. Act, the revision is maintainable. However, as against the interim order passed U/s 125 Cr.P.C. being interlocutory order, the revision petition is not maintainable. Therefore, the contention of petitioner/ party-in-person that revision petition itself is not maintainable, cannot be legally sustained.

12. The first appellate Court by referring to the judgment of this Court in **Venkaresh M. Versus Smt. Yellamma decided on 18.09.2020 (R.P.F.C. No. 37/2015)**, has rightly held that petition for recovery of interim

maintenance amount awarded under the provisions of P.W.D. Act, is not barred by limitation.

13. The first contention of the respondent No.3 is that no order can be passed against a dead person. It is true that husband of the petitioner, i.e., respondent No.1, died on 23.05.2017. The order of interim maintenance was passed on 13.01.2012-Ex.P.7. However, the respondent No.1 did never bothered to pay the interim maintenance amount, instead he challenged the maintenance amount granted in Crl. Misc. No. 17/2016 against which, petition was filed by the petitioner in Crl. Misc. No. 124/2017. In appeal in Criminal Appeal No. 102/2016, the first appellate Court has enhanced the amount to Rs.25,000/-.

14. The petitioner has sought for enforcement of the order of maintenance against the assets of deceased respondent No.1 and not against respondents No.2 and 3 individually. The right of the petitioner in seeking interim maintenance has been already adjudicated and the amount of maintenance has been determined to which the petitioner is entitled. If for any reason the respondent No.1 fails to pay arrears of maintenance or in the present case in view of the death of respondent No.1, the petitioner is entitled to enforce her right to recover the arrears of maintenance to which she is entitled. The petitioner is also entitled to recover either from the service benefits of respondent No.1 or from the assets which she inherits from respondent No.1. Therefore, the first contention of respondent No.3 that no order can be passed against a dead person, cannot be legally sustained.

15. The second contention of the respondent No.3 is that petitioner herself has filed a memo dated 16.10.2017 in Crl. Misc. No. 85/2009 as not pressed (it should have been 11.10.2017). Indisputably, the said memo was filed by the petitioner since respondent No.1 expressed his willingness to join the company of the petitioner pursuant to the judgment- Ex.P.2 and decree- Ex.P.3 in M.C. No. 202/2012 dated 20.01.2014. On the date of filing the said memo, the order of interim maintenance dated 13.01.2012 was already in force and she did never give up her claim regarding recovery of arrears of maintenance. If at all the respondent No.1 was firm in continuing his marital relationship with the petitioner pursuant to the judgment and decree in M.C. No. 202/2012 and led marital life, then there would have been no occasion

for the petitioner to file Crl. Misc. No. 123/2017 for recovery of arrears of maintenance. Indisputably, petitioner was forced to file divorce petition against respondent No.1 under M.C. No. 153/2016 on 25.06.2014-Ex.P.4. If the same is calculated from the date of memo, on 12.04.2014, to the date of filing of M.C. No. 153/2016 on 25.06.2016-Ex.P.4, then it would go to show that within a period of two years one month and 14 days, the petitioner was forced to file petition against respondent No.1 for seeking decree of divorce. However, in view of unfortunate death of respondent No.1, the said petition was closed. The said proceedings and the earlier conduct of respondent No.1 in not complying the interim order passed by the Court would only demonstrate the fact that respondent No.1 took the petitioner to matrimonial home pursuant to decree in M.C. No. 202/2012-Ex.P.3, only in order to escape from paying the interim maintenance amount awarded by the Court. Therefore, the said contention of respondent No.3 that in view of the memo of petitioner herself in Crl. Misc. No. 85/2009 and the petition being disposed off, the claim of petitioner for enforcement of interim maintenance is unsustainable in law and cannot be accepted.

16. The next contention of respondent No.3 is that revival of claim in closed case is not permissible. Indisputably, Crl. Misc. No. 85/2009 was closed as not pressed by order dated 16.10.2017. The petitioner/ party-in-person has submitted that as per the oral direction of the Presiding Officer she had filed separate petition for recovery of arrears of maintenance in Crl. Misc. No. 123/2017 and hence she filed a memo in Crl. Misc. No. 85/2009 as not pressed. If this was not to be the reason for filing the memo and simplicitor, the petitioner was to file memo as not pressed, there was no occasion or reason for the petitioner to file Crl. Misc. No. 123/2017 for enforcing her right to recover the arrears of interim maintenance amount. Therefore, the contention of respondent No.3 that revival of claim in a closed case is not permissible, also cannot be legally sustained.

17. The last contention of respondent No.3 is that petitioner has already filed testamentary petition in O.S. No. 175/2017 before the Hon'ble Bombay High Court and if the recovery petition is enforced to recover the amount from the assets of respondent No.1, then it will amount to granting double benefit to the petitioner. The subject matter involved in testamentary petition before the Hon'ble Bombay High Court with respect to the share of the parties to the said proceedings is totally a different matter than the claim of recovery of

arrears of maintenance which the respondent No.1 is bound to pay. The petitioner is not asking for any maintenance either from the income or the property of respondent No.3. The petitioner is only seeking enforcement of accrued right to recover the arrears of maintenance as per the order in Crl. Misc. No. 85/2009 dated 13.01.2012. Therefore, the contention of respondent No.3 that petitioner is getting double benefit in the subject property in testamentary petition, i.e., suit O.S. No. 175/2017 and in the present recovery petition to get double benefit, cannot also be legally sustained.

18. The another grievance of respondent No.3 is that the first appellate Court has committed serious error in granting 12% interest on the arrears of maintenance. The petitioner/ party-in-person has argued that respondent No.1 during his lifetime did not pay the arrears of maintenance whenever it fell due and she has to incur expenses for her sustenance. Therefore, the respondent No.3 is liable to pay the interest out of the service benefits of her husband, the respondent No.1.

19. Indisputably, husband of the petitioner, i.e., respondent No.1 died on 23.05.2017. The petitioner herself got stay order in Crl. Misc. No. 124/2017 dated 13.06.2017 withholding disbursement of service benefits of respondent No.1. The respondent No.3 is age old mother-in-law of petitioner and she did not receive any service benefits of her son when the interim maintenance was ordered or also when the petition was closed. The first appellate Court has not assigned any valid reason for grant of interest. If 12% interest is ordered on the arrears of maintenance, then by this time it will work out to more than double of the arrears of maintenance, for no fault of respondent No.3. The mother-in-law of petitioner is now at an advanced age and lost her husband and also her son, further so far she has not received any service benefits of her deceased son. The testamentary suit between petitioner and respondent No.3 under O.S. No. 175/2017 is pending on the file of Hon'ble Bombay High Court, wherein the rights of parties in the assets including the service benefits of deceased respondent No.1 will be decided. If these factors are taken into consideration, then the grant of interest on the arrears of maintenance claimed by the petitioner cannot be legally sustained. I find sufficient force in the contention of the learned counsel for the respondent No.3 that if interest on arrears of maintenance amount is granted, then it will amount to granting double benefit

to the petitioner out of the service benefits of her husband, respondent No. 1, to which the respondent No.3 is also entitled for her right of share. Therefore, under these circumstances respondent No.3 can not be penalized to pay the interest on arrears of maintenance claimed by the petitioner. Therefore, to the extent of grant of interest on the arrears of maintenance, interference of this Court is required. Consequently, proceed to pass the following order.

ORDER

The revision petition filed by the revision petition/ respondent No.3 is hereby partly allowed.

The judgment of the first appellate Court on the file of II Addl. Dist. & Sessions Judge, Dharwad & Special Court for Trial of the offences under the P.O.C.S.O. Act and S.C. & S.T. (P.O.A.) Act in Criminal Appeal No. 100/2018 is modified as under:

The grant of interest at the rate of 12% p.a. as awarded by the first appellate Court is hereby set aside.

The order of the first appellate Court that petitioner/ party-in-person is entitled for recovery of maintenance amount of Rs.10,000/- per month from 29.08.2009 to 12.04.2014 stands confirmed.

Registry to send a copy of this order to the trial Court along with the records, for compliance of this order.

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