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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 04.08.2022

Pronounced on:18.08.2022

+ **CRL.REV.P. 161/2018**

SUNITA & ANR.

..... Petitioner

Through: Mr. Vikas Sharma, Advocate

versus

VIJAY PAL @ MOHD. SABIR & ANR. Respondents

Through: Mr S.K. Dayal, Advocate

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present Revision Petition has been filed, challenging the impugned order dated 22.09.2017 passed by learned Principal Judge, Family Court in MT-22/2015 and praying to set aside the same, whereby maintenance application filed by the Petitioner was dismissed on the ground of *res judicata*.

2. The brief facts of the case are that the marriage between petitioner no.1 and respondent no.1 was solemnized in the year 1990 and the parties last resided together up to January 1996. Two children were born from the wedlock; a son who has attained majority and a minor daughter. Since the time of separation, the parties have been involved in multiple litigations. Out of which one such case was filed

under Section 125 Cr.P.C. in MT-22/2015. The Petition by means of the second petition under Section 125 Cr.P.C. prayed to direct the Respondent to pay a sum of Rs. 20,000/- per month in favour of Petitioner no. 1 and also to pay a sum of Rs. 10,000/- per month in favour of the Petitioner no. 2. Further by means of the Petition the Petitioners prayed for the Court to award Rs. 55,000/- towards litigation expenses in favour of the Petitioners. However, the said case was dismissed on the ground of *res judicata vide* the impugned order dated 22.09.2017 on the ground that prior to the filing of the said petition, the Petitioner along with her two children had filed petition Bearing No. 289/1996 under Section 125 Cr.P.C. before the court of ACJM, Gurgaon, Haryana which was decided *vide* order dated 16.04.1999 allowing each of the three petitioners (in the 1996 petition) a sum of Rs. 500/- per month as maintenance.

Submission of the Learned counsels

3. It is stated by the learned Counsel for the petitioner that on the date of filing of the present petition before the learned Trial Court, the petitioner was entitled to file a fresh petition as there was a fresh cause of action. He further argued that on the date of filing the present petition before the learned Trial Court, the petitioner was not receiving any maintenance as ordered on 16.04.1999 by the learned ACJM, Gurgaon, the principle of *res judicata* was not attracted in the facts and circumstances of this case. He further argues that the claimants, if necessary, can file separate claims for maintenance each month. It is argued that *vide* order dated 16.04.1999 maintenance was granted only

from the date of filing of the said claim petition. It was nowhere mentioned in the said order that it shall operate either for future or till further orders. It was also submitted by the learned counsel for the petitioner that it cannot be presumed to be operating beyond the date of decision of the Maintenance Petition No. 279/1996. It was stated that petitioner was entitled in law to claim monthly maintenance post January 2015. Section 127 Cr.P.C. is not the proper recourse, since the maintenance period claimed in the maintenance petition filed on 07.01.2015 was for claiming maintenance from January 2015 onwards. The observations made in the impugned order read as follows: -

“15. The judgment relied upon in support by both the counsels decided by Manipur High Court and Kerala High Court shall be read in the context of their factual background. In both these cases petition under Section 125 CrPC was filed a second time. In none of the two cases (Supra) the first petition filed u/s 125 Cr.P.C was decided on merits, awarding maintenance. In both these cases earlier petition filed under Section 125 CrPC was dismissed for one or the other reason as mentioned in the said judgments (Supra)]. Hence the Hon'ble High Court held in the two cases that principle of Res judicata shall not be applicable.

16. However, in the instant case, the earlier petition of the two petitioners herein for their maintenance was filed u/s 125 CrPC in the Court of ACJM (Gurgaon, Haryana and the same was allowed by the said Court awarding maintenance @ Rs500/- pm each to each the two petitioners and also to the minor son. The petitioner withdrew the amount of maintenance sometimes upto 2002 and they have now filed this petition under Section 125 Cr.P.C for the wife and the daughter afresh leaving the son for the reason of his attaining the age of majority.

17. In this background the proper course of action to the petitioners is to initiate proceedings u/s 127 CrPC for the alteration of the amount subject to the satisfaction of the conditions in that provision of filing the petition u/s 125 CrPC afresh. In this regard, this court also finds support from the judgement of Manipur High Court relied upon the Respondent (Supra), wherein, it has been held that there is no provision in the code which bars a second application u/s 488 CrPC (now 125 CrPC). It has observed that but when an application under this Section has been heard and adjudicated under this Section has been heard and adjudicated upon, it is against the general principle of the rule of resjudicata that a subsequent application on the same facts should be entertained. The Hon'ble High Court held that subject to this, a prior application does not bar a subsequent application if the prior application was dismissed for default without adjudicating on the merits.

18. In the given background of the facts and the legal position discussed above, the instant petition filed under Section 125 CrPC is not maintainable and is hit by the principled of resjudicata. In the earlier petition the amount of Rs. 500/- pm has already been awarded. The Petitioners availed this maintenance amount upto 2002. The proper course open to the petitioners was to file a petition under Section 127 CrPC before the same court at Gurgaon and not to take recourse to Section 125 CrPC as afresh in Delhi. It is impermissible under the law. Petition is dismissed”

4. Learned counsel for respondents on the other hand states that there is no infirmity and illegality in the impugned order as it is passed in accordance with law. Once the application for maintenance has been adjudicated upon merits, the only relief one can seek is under Section 127 Cr.P.C. and that no fresh cause of action can be stated to have accrued entitling the petitioner to file the fresh petition. The learned trial court had rightly dismissed the petition of the petitioner

on the grounds of *res judicata* as the petitioner has intentionally concealed the fact that the petition under Section 125 Cr.P.C. was already adjudicated upon vide order dated 16.04.1996 in favor of the Petitioner by the Learned ACJM, District Court Gurugram. Learned counsel for the respondent also submits that the said order dated 16.04.1999 was merged in the order dated 29.05.2001 passed by the High Court of Delhi under Section 24 of the Hindu Marriage Act for the payment of maintenance at Rs. 3500/- per month. Thus, the order dated 16.04.1999 was still in effect and existence according to which the maintenance amount is being paid regularly, and the excess amount of Rs.79,500/- has been paid to the present revisionists. The Delhi High Court in F.A.O 24/2008 (in C.M. 1446/2000) titled as “*Shri Vijaypal vs. Smt. Sunita & Anr*”, wherein the Counsel of the appellant/husband submitted that the take-home salary of the appellant is only Rs. 7,061/- per month as against to Rs. 9,372/- per month, and he has to maintain his brother also. Hence, by order dated 29.05.2001 directed the Respondent to pay Rs. 3,500/- per month along with Rs. 5,500/- as litigation expenses to the Petitioner no. 1 herein. The observations of the High Court in the order dated 29.05.2001 read as under: -

“In the aforementioned circumstances, I direct the Appellant to pay Rs. 3,500/- per month to respondent no. 1 from the date of application under Section 24 of the Hindu Marriage Act before this Court along with litigation expenses amounting to Rs. 5,500/-. However, this amount of Rs. 3,500/- shall include the amount which has been paid or is being paid in connection with petition under Section 125 CrPC. The amount shall be paid within a period of 8 weeks.”

5. Before proceeding to decide the present petition, the objective of Section 125 of Cr.P.C. may be understood. The objective of Section 125 Cr.P.C. is to ensure financial support to the estranged wife. Further, the objective behind granting maintenance is not to punish a person but rather support the relations who have a moral right to be supported. The most important precondition for Section 125 Cr.P.C. to become operative is the condition that the wife is unable to maintain herself and that the husband has neglected or refused to maintain his wife.

6. An adjudicated order under Section 125 Cr.P.C. is a precondition for making an application under Section 127 Cr.P.C. Once an application has been filed under Section 125 and a maintenance amount has been granted, an application under Section 127 Cr.P.C. can be filed to claim alteration of the maintenance so awarded owing to change in circumstance. Section 127 Cr.P.C. is not a stand-alone provision as the same requires a decision granting maintenance under Section 125 Cr.P.C. The term ‘*change in circumstances*’ as referred to in Section 127(1) not only includes a change in the financial circumstances of the husband or wife but may also include other circumstantial changes in the husband’s or wife’s life which have arisen since the maintenance was first awarded. I also deem it appropriate to refer to Section 127 of Cr.P.C., which reads as under:

“...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...”

7. In the present case, the learned Principal Judge, Family Court opined that the present matter is hit by the principle of *res judicata* and the remedy is available under Section 127 Cr.P.C. once the order has been passed under Section 125 Cr.P.C. granting maintenance.

8. The question before this Court is where once a favourable order has already been passed on merits under Section 125 Cr.P.C, can a subsequent petition be filed under Section 125 Cr.P.C.?

9. This Court notes that a petition under Section 125 Cr.P.C. will be covered by the principle of *res judicata* due to its universal applicability, as proceedings under Section 125 Cr.P.C. are Quasi-Criminal in nature. Once the petition has been adjudicated under Section 125 Cr.P.C. favourably by a Court of competent jurisdiction on merits, a subsequent petition cannot be preferred which arises from the same dispute having similar situations, circumstances and grounds as the previously adjudicated issues in the earlier petition filed under Section 125 Cr.P.C.

10. The question regarding the recourse available to a person in case of changed circumstances and alteration sought after an order granting maintenance under Section 125 Cr.P.C. has been passed by a court of competent jurisdiction, lies answered under provisions of Section 127 Cr.P.C. In order to avoid re-adjudication of the same issue, the legislature has enacted Section 127 Cr.P.C. to deal with

change in circumstances after passing of an order granting maintenance. A myriad of factors are taken into consideration by the Court in order to determine whether there is an actual change in circumstances or not which requires alternation in allowance. From a plain reading of sub-section (1) of Section 127 Cr.P.C. it can be noted that it is a provision for increase or decrease of maintenance as granted under Section 125 Cr.P.C. earlier, has been dealt with under this section. Therefore, upon any consequent change in the circumstances or situation of the parties concerned at the time of filing of application for alteration of the original order of maintenance, a petition under Section 127 Cr.P.C. has to be filed. The court must be satisfied that there has been a *change in the circumstances* of either the husband or of the wife, based upon which the fate of a petition under Section 127 Cr.P.C. shall be determined.

11. The term '*change in circumstances*' as referred to in Section 127(1) apart from including change in the financial circumstances of the husband or of the wife, also include other circumstantial changes which have arisen since the maintenance was first awarded. Therefore, whenever a party claims a change in circumstance after an order granting maintenance has been passed under Section 125 Cr.P.C., the appropriate recourse would be a petition under Section 127 Cr.P.C. and not a fresh petition under Section 125 Cr.P.C.

12. In the present case, it is not undisputed that a petition filed by the Petitioner under Section 125 Cr.P.C. was conclusively decided and maintenance for a sum of Rs. 500/- per month to each of the two petitioners was allowed which was drawn up to the year 2002. Thus,

when a subsequent petition was filed as MT-22/2015 it has to be treated as a second petition for a previously adjudicated issue. This Court does not find merit in the submissions made by learned Counsel for the Petitioner, that for claiming maintenance every month, a separate application can be filed every month, which should be decided on merits every month.

13. The appropriate course of action, as rightly pointed out by the learned trial court, is to initiate proceedings under Section 127 Cr.P.C. for the alteration of amount subject to the satisfaction of the conditions as mentioned above. The intent of enacting Section 127 Cr.P.C. specifically focused on the aspect of change in circumstances. Section 125 Cr.P.C. and 127 Cr.P.C. are the two provisions which are intertwined with each other. On one hand, Section 125 Cr.P.C. provides for the grant of maintenance to a wife or a woman who has not been maintained by her spouse in order to meet the social justice requirements where the subsistence and a reasonable standard of living is ensured by the court. Whereas, on the other hand, once maintenance has already been granted under Section 125 Cr.P.C. and if subsequent to the grant of maintenance a change in circumstance happened, either of the parties to the earlier petitioner under Section 125 Cr.P.C. can file a petition under Section 127 Cr.P.C. in order to seek alteration of allowance in the previously granted maintenance under Section 125 Cr.P.C. The distinction between the two provisions is that one initiates the grant of maintenance and the other makes space for making alterations in the already granted allowance due to change in circumstances.

14. In the present case High Court of Delhi has taken note of maintenance being paid under Section 125 CrPC and has referred to it in order dated 29.05.2001 and directed the respondent to keep paying the said amount. No appeal has been preferred against that order. The order of Delhi High Court and learned ACJM does not state that the order is valid that for a month only. Since the application under Section 125 Cr.P.C. has already been heard and adjudicated upon where maintenance was granted to the Petitioners, the second petition shall be hit by the principle of *res judicata* and a subsequent application under Section 125 Cr.P.C. shall not be maintainable since the same has been adjudicated on merit previously. The proper legal recourse available to the petitioner is filing a petition under Section 127 Cr.P.C. stating the changed circumstances before the appropriate court. The case will be different if the Petition under Section 125 Cr.P.C. is dismissed for non-prosecution or otherwise. Taking contrary view will be against the principle of *res judicata* which is to give finality to the litigation and ensure that no one is vexed twice in a litigation based on one and the same cause.

15. The meaning of the legal maxim “*Res Judicata*” stems from the Latin maxim “*Nemo Debet Bis Vexari Pro Una Et Eadem Causa*”, which translates to that no person be tried for the same offence twice (Ref. *State v. Nalini*, (1999) 5 SCC 253). The Apex Court in *Nagabhushanammal Vs. C. Chandikeswaralingam*, 2016 4 SCC 434, observed that the term ‘*Res Judicata*’, refers to the “*things adjudicated*” or “*an issue that has been definitively settled by judicial*

decision". Further, observing the universal applicability of the principle of *res judicata* as held in the case of ***M. Nagabhushana v. State of Karnataka, (2011) 3 SCC 408***, it can be inferred that the principle of *Res Judicata* shall apply to both civil and criminal proceedings in order to secure the interest of justice and multiple litigations. The observation of the Hon'ble Supreme Court is reproduced as under-

"12. The principles of Res Judicata are of universal application as it is based on two age old principles, namely, 'interest reipublicae ut sit finis litium' which means that it is in the interest of the State that there should be an end to litigation and the other principle is 'nemo debet his ve ari, si constet curiae quod sit pro un aet eademn cause' meaning thereby that no one ought to be vexed twice in a litigation if it appears to the Court that it is for one and the same cause. This doctrine of Res Judicata is common to all civilized system of jurisprudence to the extent that a judgment after a proper trial by a Court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should for ever set the controversy at rest.

13. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law in as much as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of Res Judicata has been evolved to prevent such an anarchy. That is why it is perceived that the plea of Res Judicata is not a technical doctrine but a fundamental principle which sustains the Rule of Law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing

Court for agitating on issues which have become final between the parties.”

16. Coming back to the present case, the contention of learned counsel for the petitioner that since, maintenance was not being paid by respondent in the first maintenance petition it had entitled him to file a fresh case, is meritless, as in that case, the proper recourse will be to file execution petition for recovery of arrears of maintenance.

17. The other contention that order of maintenance was only for the month in which it was passed is also liable to be rejected as an order under Section 125 Cr.P.C., mentions, the date from which, the maintenance is to be paid as per mandate of ***Rajnish v. Neha and Anr., (2021) 2 SCC 324***; and is till further order until fresh cause of action under Section 127 Cr.P.C. arises or the petitioner disentitles herself to receive maintenance on grounds mentioned in Section 125(4) Cr.P.C. itself. Moreover, the legislature in its wisdom enacted Section 127 Cr.P.C. to cover alterations of income or circumstances of either of the parties after petition under Section 125 Cr.P.C. has been adjudicated.

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.

19. In view of the above, the present revision petition stands dismissed.

SWARANA KANTA SHARMA, J
AUGUST 18, 2022/zp

