

Court No. - 93**Case :-** CRIMINAL MISC. WRIT PETITION No. - 22529 of 2008**Petitioner :-** Shyam Bahadur Singh**Respondent :-** State of U.P. and Another**Counsel for Petitioner :-** Satish Kumar Mishra**Counsel for Respondent :-** Govt. Advocate, Shyam Sunder Mishra**Hon'ble Mrs. Jyotsna Sharma, J.**

1. Heard Sri Satish Kumar Mishra, learned counsel for the petitioner, Sri Shyam Sunder Mishra, learned counsel for respondent no. 2 and Sri O.P. Mishra, learned AGA for the State.

2. This writ petition has been filed by the petitioner to issue a writ, order or direction in the nature of certiorari quashing the order dated 31.01.2006 and 22.01.2004 passed by Additional District Judge/Special Judge (SC/ST Act), Banda and Additional Chief Judicial Magistrate, North-East Railway, District Banda respectively.

3. The facts relevant for the purpose of this writ petition are as below:-

The respondent no. 2 filed an application under Section 125 Cr.P.C. claiming maintenance from her husband, which was dismissed on 31.01.1995 on certain grounds; the criminal revision filed by the respondent/wife was also dismissed; the respondent no. 2 again moved a second application under Section 125 Cr.P.C. on a premise that there have been change in circumstances, therefore, she is entitled to claim maintenance from her husband and that second application case no. 1490/2003 came to be allowed directing her husband to pay Rs. 1,500/- per month; the opposite party aggrieved by the above order dated 22.01.2004, preferred a criminal revision no. 30/2004 which was dismissed on 31.01.2006, now the petitioner husband is before this court challenging the order passed by the trial court as well as the order passed by the revisional court.

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.

5. The contentions of the petitioner is opposed by respondent no. 2 on the

ground that in a judicial order this Court is not allowed to interfere while exercising writ jurisdiction under Article 226 of the Constitution of India. Hence, the petition should be dismissed at the very threshold. To stress above point. Judgement of Hon'ble Supreme Court in the case of **Radhey Shyam and another vs. Chhabi Nath and others, (2015) 5 SCC 423** has been referred to.

The apex court in the aforesaid judgment held that writ of certiorari lies to bring decisions of an "Inferior court", tribunal, public authority or any other body of persons for review so that the court may determine whether they should be quashed or not. However, expression "interference" the court is not referable to the judicial courts Writ of certiorari lies against patently erroneous or without jurisdiction orders of tribunals or authorities or courts other than judicial courts. The Apex Court in para 25 further observed as below:-

"25. All courts in the jurisdiction of a High Court are subordinate to it and subject to its control and supervision under Article 227. Writ jurisdiction is constitutionally conferred on all High Courts. Broad principles of writ jurisdiction followed in England are applicable to India and a writ of certiorari lies against patently erroneous or without jurisdiction orders of Tribunals or authorities or courts other than judicial courts. There are no precedents in India for High Courts to issue writs to subordinate courts. Control of working of subordinate courts in dealing with their judicial orders is exercised by way of appellate or revisional powers or power of superintendence under Article 227. Orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts. While appellate or revisional jurisdiction is regulated by statutes, power of superintendence under Article 227 is constitutional. The expression "inferior court" is not referable to judicial courts"

6. Thus it has been clearly laid down that order of civil court could be challenged under Article 227 of the Constitution of India and not under original writ jurisdiction under Article 226 of the Constitution of India.

7. Certain facts catch attention of this court. The second application for grant of maintenance was filed by the respondent no. 2 in the year 2003 and the same was decided by an order dated 22.01.2004. The revision filed against that order was dismissed in January 2006. This petition under Article 226 of the Constitution of India came to be filed by the husband with a prayer to quash those orders in 2008 and since then matter is pending. Almost 14 years have gone since then and all this while, this legal issue was neither raised nor realised that the writ petition seeks to invoke powers under Article 226 instead of Article 227 of the Constitution of India. This is settled law that non-mentioning or wrong mentioning of provisions of law should not be treated as obstacle in proceeding with a case. In my view, an ordinary litigant cannot be expected of having too minute knowledge of provisions of law and that the court shall be failing in its duty if the case is thrown in the waste paper basket on a technical point or on the basis of mentioning of a wrong provision of law. In such matter, a Judge ought to play its expected role. In this view of the matter, I find it fit to treat this petition as one moved under Article 227 of the Constitution of India.

8. This is not disputed that the earlier proceeding initiated by the wife under Section 125 Cr.P.C. came to be dismissed and the revision filed by

her also came to be dismissed. This is not disputed that subsequent case under Section 125 Cr.P.C. was filed by the wife on a premise that there has been a change in circumstances.

9. I find it pertinent to reproduce relevant portion of Section 125 Cr.P.C. which is as below:-

"(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 not exceeding five hundred rupees in the whole, 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."

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.

12. Hence, this writ petition is **dismissed**.

Order Date :- 23.5.2023

#Vikram/-