

A.F.R.

Neutral Citation No. - 2024:AHC:89029

Court No. - 80**Case :- MATTERS UNDER ARTICLE 227 No. - 6584 of 2023****Petitioner :- Smt. Hema And Another****Respondent :- State of U.P. and Another****Counsel for Petitioner :- Sujan Singh****Counsel for Respondent :- G.A.,Niharika Dubey,Vishakha Dubey****Hon'ble Dr. Yogendra Kumar Srivastava,J.**

1. Heard Sri Sujan Singh, learned counsel for the petitioners, Sri Pankaj Saxena, learned A.G.A.-I appearing for the State-respondent and Ms. Niharika Dubey, learned counsel appearing for the respondent no. 2.

2. The present petition has been filed seeking to assail the order dated 02.01.2023 passed by the Principal Judge, Family Court, Agra in Misc. Case No. 2053 of 2022, under Section 125 Cr.P.C., arising out of Maintenance Case No. 783 of 2014 (Smt. Hema and another Vs. Dhirendra Pratap Singh).

3. The order dated 02.01.2023, which is subject matter of challenge in the present petition, was passed upon an application No. 3A filed by the petitioners seeking a recall of an earlier order dated 29.10.2022 and to restore the case to its original number.

4. The aforesaid application was dismissed by the Principal Judge, Family Court stating that after dismissal of an application under Section 125 Cr.P.C., no application seeking restoration of the case was entertainable. It was also observed that the petitioner could file a second application under Section 125 Cr.P.C.

5. Attention of the Court has been drawn to the factual aspects of the case by pointing out that the proceedings under Section 125

Cr.P.C. were instituted by filing a maintenance petition on 05.09.2014, which was allowed ex-parte by an order dated 08.09.2016, in terms whereof an amount of Rs. 10,000/- per month had been awarded in favour of the petitioner no. 1, and an amount of Rs. 2,000/- in favour of the petitioner no. 2.

6. It is stated that the aforesaid *ex parte* order was recalled by a subsequent order dated 26.11.2018, upon an application by the respondent no. 2.

7. It is submitted that, on 29.10.2022, which was the date fixed in the case, the petitioner upon reaching the court was informed that the case had been taken up and an order had been passed dismissing the maintenance petition for non-prosecution. Immediately thereupon, on the same date, the petitioners are stated to have moved a restoration application seeking recall of the order. The restoration application was taken up, on 02.01.2023, and the same was dismissed.

8. Aggrieved by the aforesaid order, the present petition has been preferred.

9. Contention of the counsel for the petitioners is that there was no want of *bona fides* or lack of diligence on part of the petitioners and the conclusion drawn by the court to the contrary, is erroneous.

10. It is submitted that the restoration application having been moved, on the same date, the court concerned ought to have allowed the same, in the interest of justice.

11. As regards the conclusion drawn by the court concerned with regard to the restoration application being not entertainable, in proceedings under Section 125 Cr.P.C., it is urged that same

would not be legally sustainable. To support the aforesaid submission, reliance, in this regard, has been placed on decisions in **Kusum Devi Vs. Ram Chandra Maurya**¹; **Kehari Singh Vs. State of U.P.**²; **Jagmohan Arora Vs. Saroj Arora**³; **Suhird Kamra Vs. Neeta and Another**⁴ and **Sanjeev Kapoor Vs. Chandana Kapoor and Others**⁵.

12. Counsel appearing for the respondent no. 2 has sought to contend that the petitioners having moved a second application seeking maintenance, which is pending, there would be no plausible reason for them to seek restoration of the earlier application.

13. In this regard, learned counsel for the petitioners has drawn attention of the Court to the specific assertion in the petition wherein the petitioners have undertaken that in the event of the earlier maintenance petition being restored to its original number, the petitioners would withdraw the second application filed for the purpose.

14. The principal question, which falls for consideration, is as to whether, in proceedings under Section 125 Cr.P.C., upon an order having been made, the court concerned can be held to be *functus officio* for the purposes of entertaining an application seeking recall, and that any application which has been moved for recall of an order rejecting the maintenance petition for non-prosecution, would amount alteration of the judgment so as to be barred by Section 362 Cr.P.C.

15. For ease of reference, the provisions contained under Sections

1 2004 1 Crimes(HC) 153

2 2005 0 CrLJ 2330

3 2011 LawSuit(Del) 2381

4 1988 (14) DRJ 282

5 (2020) 13 SCC 172

125(1), 125(5) and 127 Cr.P.C. relating to orders for maintenance of wives, children and parents, under Chapter-IX of the Cr.P.C. are being extracted below:-

"125. Order for maintenance of wives, children and parents. – (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, 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:

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this subsection, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of the notice of the application to such person.

Explanation. – For the purposes of this Chapter, –

(a) "**minor**" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) "**wife**" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

* * *

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses

to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

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 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 that 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.”

16. Section 362 of the Cr.P.C., which creates an embargo on the court not to alter the judgment, would also be required to be adverted, and the same is reproduced below:-

"Section 362.Court not to alter judgement.- Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it

has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

17. Section 125(1) Cr.P.C. which empowers the Magistrate to pass an order for maintenance of wives, children and parents, uses the expression 'as the Magistrate may from time to time direct', which is indicative that while passing an order under Section 125(1) Cr.P.C., the Magistrate may have to exercise jurisdiction, as required, from time to time

18. Section 127(1) Cr.P.C. contains a provision relating to alteration in allowance, and in terms thereof, the Magistrate is empowered to alter an order passed under Section 125. In terms of sub section (2) of Section 127, the Magistrate is empowered to cancel or vary the order passed under Section 125 Cr.P.C.

19. The legislative scheme contained under Section 125 and 127 Cr.P.C., referred to above, indicates that that while making an order for maintenance under Section 125(1) Cr.P.C., the Magistrate may be required to exercise jurisdiction, from time to time, upon fulfillment of the conditions specified thereunder. Section 127 Cr.P.C. contemplates situations wherein the Magistrate may pass an order cancelling or varying the earlier order made under Section 125 Cr.P.C.

20. The aforementioned provisions under Sections 125(1) and 127 Cr.P.C., which empower the Magistrate to exercise jurisdiction for passing of orders from time to time, as the occasion requires, and also varying or cancelling the order, would go to show that as per the legislative scheme contained under Sections 125 and 127 Cr.P.C., the Magistrate after passing of the judgment or final order, in proceedings under Section 125 Cr.P.C., cannot be said to have become *functus officio*.

21. This brings us to the question as to whether the embargo contained in Section 362 Cr.P.C. prohibiting the court to alter or review its judgment or final order disposing of the case, would be applicable to an order of maintenance under Section 125 Cr.P.C.

22. In **Sanjeev Kapoor Vs. Chandana Kapoor and others**⁶, after examining the legislative scheme as delineated by Sections 125 and 127 Cr.P.C., and the express provisions where an order passed thereunder can be cancelled or altered, it was held that the embargo as contained in Section 362 Cr.P.C. is relaxed in proceedings under Section 125 Cr.P.C. The observations made in the judgment, in this regard, are as follows:

"25. In Section 125 CrPC the expression used is "*as the Magistrate may from time to time direct*". The use of the expression "from time to time" has purpose and meaning. It clearly contemplates that with regard to the order passed under Section 125(1) CrPC, the Magistrate may have to exercise jurisdiction from time to time. Use of the expression "from time to time" is in exercise of jurisdiction of the Magistrate in a particular case. *Advanced Law Lexicon* by P. Ramanatha Aiyar, 3rd Edn. defines "time to time" as follows:

"*Time to time*. As occasion arises."

26. The above legislative scheme indicates that the Magistrate does not become functus officio after passing an order under Section 125 CrPC, as and when the occasion arises the Magistrate exercises the jurisdiction from time to time. By Section 125(5) CrPC, the Magistrate is expressly empowered to cancel an order passed under Section 125(1) CrPC on fulfilment of certain conditions.

27. Section 127 CrPC also discloses the legislative intendment where the Magistrate is empowered to alter an order passed under Section 125 CrPC. Sub-section (2) of Section 127 CrPC also empowers the Magistrate to cancel or vary an order under Section 125. The legislative scheme as delineated by Sections 125 and 127 CrPC as noted above clearly enumerated the circumstances and incidents provided in the Code of Criminal Procedure where the court passing a judgment or final order disposing of the case can alter or review the same. The embargo as contained in Section 362 is, thus, clearly relaxed in the proceedings under Section 125 CrPC as indicated above."

23. The scope of Section 362 Cr.P.C. was also considered, and it was held that the rigour contained in the section, is relaxed in two

6 (2020) 13 SCC 172

conditions, that is to say, where power to alter or review a judgment or final order is provided either; (i) by the Code of Criminal Procedure itself, or (ii) any other law for the time being in force. As regards the embargo put on the criminal court to alter or review its judgment, it was observed that the same is with a purpose and object. Referring to the earlier decisions in **Sankatha Singh v. State of U.P.**⁷, **Sooraj Devi vs. Pyare Lal**⁸, **Simrikhia v. Dolley Mukherjee**⁹, **Hari Singh v. Harbhajan Singh Bajwa**¹⁰, **State v. K.V. Rajendran**¹¹, **Mahua Biswas v. Swagata Biswas**¹²; and the law summarized therein, it was observed that criminal justice delivery system does not clothe criminal courts with power to alter or review a judgment or final order disposing of a case except to correct the clerical or arithmetical errors.

24. In order to examine the extent to which the rigour of the embargo as contained in Section 362 Cr.P.C., would be relaxed in the context of the powers to be exercised in proceedings relating to passing of maintenance orders under Section 125 Cr.P.C., it would be necessary to take a view of the legislative scheme contained in Sections 125 to 127 Cr.P.C.

25. The scope of the legislation relating to maintenance under Section 125 Cr.P.C. and its social objective was examined in **Badshah v. Urmila Badshah Godse**¹³ and applying the principle of purposive interpretation, it was held that in the context of a 'social justice legislation', the Court must give effect to that construction, which would be responsible for smooth functioning of the system for which the statute had been enacted. It was

7 AIR 1962 SC 1208

8 (1981) 1 SCC 500

9 (1990) 2 SCC 437

10 (2001) 1 SCC 169

11 (2008) 8 SCC 673

12 (1998) 2 SCC 359

13 (2014) 1 SCC 188

observed as follows:

"13.3. ... in such cases, purposive interpretation needs to be given to the provisions of Section 125 Cr.P.C. While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve "social justice" which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of the social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society.

14. Of late, in this very direction, it is emphasised that the courts have to adopt different approaches in "social justice adjudication", which is also known as "social context adjudication" as mere "adversarial approach" may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Prof. Madhava Menon describes it eloquently:

'It is, therefore, respectfully submitted that "social context judging" is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the Judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication.'¹⁴

15. The provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from "adversarial" litigation to social context adjudication is the need of the hour."

26. The role and duty of Court, in the context of change in law with change in society, was explained, and referring to the observations made by **Benjamin N. Cardozo**¹⁵, and also the observations made in **Gray's Lectures on 'The Nature and**

14 Keynote address on "Legal Education in Social Context" delivered at National Law University, Jodhpur on October 12, 2005.

15 Benjamin N. Cardozo: The Nature of Judicial Process

Sources of the Law¹⁶, the following observations were made:-

16. The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law.

17. Cardozo acknowledges in his classic

'... no system of *jus scriptum* has been able to escape the need of it.'

and he elaborates:

'It is true that codes and statutes do not render the Judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. ... There are hardships and wrongs to be mitigated if not avoided. Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning which, however obscure and latent, had nonetheless a real and ascertainable pre-existence in the legislator's mind. The process is, indeed, that at times, but it is often something more. The ascertainment of intention may be the least of a Judge's troubles in ascribing meaning to a statute. ...

Says Gray in his lectures:

"The fact is that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the Judges have to do is, not to determine that the legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present." '

18. The court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonise results with justice through a method of free decision — *libre recherché scientifique* i.e. "free scientific research". We are of the opinion that there is a non-rebuttable presumption that the legislature while making a provision like Section 125 Cr.P.C., to fulfil its constitutional duty in good faith, had always intended to give relief to the woman becoming "wife" under such circumstances. This approach is particularly needed while deciding the issues relating to gender justice."

27. The proposition that for construing an enactment effort should be made to give effect to the legislative purpose, has been

¹⁶ John Chipman Gray: The Nature and Sources of the Law

consistently followed. In this regard, reference may be had to the decision in **R (on the application of Quintavalle) Vs. Secretary of State for Health**¹⁷, wherein the following observations were made:-

"8. The basic task of the Court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. ... Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The Court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment."

28. Similar observations were made in **Stock Vs. Frank Jones (Tipton) Ltd.**¹⁸, wherein wherein referring to the rule in **Hydon's case**, it was held as follows:-

"Words and phrases of the English language have an extraordinary range of meaning. This has been a rich resource in English poetry (which makes fruitful use of the resonances, overtones and ambiguities), but it has a concomitant disadvantage in English law (which seeks unambiguous precision, with the aim that every citizen shall know, as exactly as possible, where he stands under the law). The first way says Lord Blackburn, of eliminating legally irrelevant meanings is to look to the statutory objective. This is the well-known canon of construction . . . which goes by the name of "the rule in Heydon's Case" (1584) 3 Co. Rep. 7b. (Nowadays we speak of the "purposive" or "functional" construction of a statute.)"

29. The provisions with regard to grant of maintenance under Section 125 Cr.P.C. and the duty of the husband towards the wife in regard thereof, came up for consideration in the case of **Bhuwan Mohan Singh vs. Meena & others**¹⁹, and referring to the earlier decisions in **Smt. Dukhtar Jahan v. Mohammed Farooq**²⁰,

¹⁷ (2003) 2 All ER 113 (UK House of Lords)

¹⁸ (1978) 1 WLR 231 (UK House of Lords)

¹⁹ (2015) 6 SCC 353

²⁰ (1987) 1 SCC 624

Vimala (K.) v. Veeraswamy (K.)²¹ and **Kirtikant D. Vadodaria v. State of Gujarat**²² it was held that the proceedings are summary in nature and they intend to provide a speedy remedy and achieve a social purpose. The observations made in the judgement in this regard are as follows :-

"7. We are obliged to reiterate the principle of law how a proceeding under Section 125 of the Code has to be dealt with by the court, and what is the duty of a Family Court after establishment of such courts by the Family Courts Act 1984. In *Smt. Dukhtar Jahan v. Mohammed Farooq* (1987) 1 SCC 624, the Court opined that: (SCC p. 631, para 16)

"16.Proceedings under Section 125 of the Code, it must be remembered, are of a summary nature and are intended to enable destitute wives and children, the latter whether they are legitimate or illegitimate, to get maintenance in a speedy manner."

8. A three-Judge Bench in *Vimala (K.) v. Veeraswamy (K.)* (1991) 2 SCC 375, while discussing about the basic purpose under Section 125 of the Code, opined that: (SCC p. 378, para 3)

"3. Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife.

9. A two-Judge Bench in *Kirtikant D. Vadodaria v. State of Gujarat* (1996) 4 SCC 479, while adverting to the dominant purpose behind Section 125 of the Code, ruled that: (SCC p. 489, para 15)

"15. ... While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are

21 (1991) 2 SCC 375

22 (1996) 4 SCC 479

intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation."

30. The principle of applying a liberal construction to a remedial legislation such as the one above, has been emphasised in the **Construction of Statutes by Crawford**²³ in the following terms:-

"...Remedial statutes, that is, those which supply defects, and abridge superfluities, in the former law, should be given a liberal construction, in order to effectuate the purposes of the legislature, or to advance the remedy intended, or to accomplish the object sought, and all matters fairly within the scope of such a statute be included, even though outside the letter, if within its spirit or reason."

31. To a similar effect is the observation made by **Blackstone** in **Construction and Interpretation of Laws**²⁴, which is as under:-

"It may also be stated generally that the courts are more disposed to relax the severity of this rule (which is really a rule of strict construction) in the case of statutes obviously remedial in their nature or designed to effect a beneficent purpose."

32. In the context of 'beneficial construction' as a principle of interpretation, it has been observed in **Maxwell on The Interpretation of Statutes**²⁵, as follows:-

"...where they are faced with a choice between a wide meaning which carries out what appears to have been the object of the legislature more fully, and a narrow meaning which carries it out less fully or not at all, they will often choose the former. Beneficial construction is a tendency, rather than a rule."

33. The principle of applying a liberal construction to a beneficial legislation having a social welfare purpose was reiterated in the case of **Allahabad Bank & Anr. Vs. All India Allahabad Bank**

²³ The Constitution of Statutes by Earl T. Crawford, pp. 492-493

²⁴ Construction and Interpretation of Laws by Blackstone

²⁵ Maxwell on The Interpretation of Statutes, 12th Edition by P. St. J. Langan

Retired Employees Association²⁶, and it was observed as follows:-

"16. ...Remedial statutes, in contradistinction to penal statutes, are known as welfare, beneficent or social justice oriented legislations. Such welfare statutes always receive a liberal construction. They are required to be so construed so as to secure the relief contemplated by the statute. It is well settled and needs no restatement at our hands that labour and welfare legislation have to be broadly and liberally construed having due regard to the Directive Principles of State Policy. The Act with which we are concerned for the present is undoubtedly one such welfare oriented legislation meant to confer certain benefits upon the employees working in various establishments in the country."

34. Reference may also be had to the case of **Bharat Singh Vs. Management of New Delhi Tuberculosis Centre, New Delhi & Ors.**²⁷, where purposive interpretation safeguarding the rights of have-nots was preferred to a literal construction in interpreting a welfare legislation, and it was held as follows:-

"11. ...the court has to evolve the concept of purposive interpretation which has found acceptance whenever a progressive social beneficial legislation is under review. We share the view that where the words of a statute are plain and unambiguous effect must be given to them. Plain words have to be accepted as such but where the intention of the legislature is not clear from the words or where two constructions are possible, it is the court's duty to discern the intention in the context of the background in which a particular Section is enacted. Once such an intention is ascertained the courts have necessarily to give the statute a purposeful or a functional interpretation. Now, it is trite to say that acts aimed at social amelioration giving benefits for the have-nots should receive liberal construction. It is always the duty of the court to give such a construction to a statute as would promote the purpose or object of the Act. A construction that promotes the purpose of the legislation should be preferred to a literal construction. A construction which would defeat the rights of the have-nots and the underdog and which would lead to injustice should always be avoided..."

²⁶ (2010) 2 SCC 44

²⁷ (1986) 2 SCC 614

35. The Court's function, in view of the foregoing discussion, would thus be to construe the words used in an enactment, so far as possible, in a way which best gives effect to the purpose of the enactment.

36. Chapter IX of the Code of Criminal Procedure, 1973 contains provisions for making orders for maintenance of wives, children and parents. The subject matter of the provisions contained under the chapter though essentially of a civil nature, the justification for their inclusion in the Cr.P.C., is to provide a more speedy and economical remedy than that available in civil courts for the benefit of the persons specified therein.

37. The proceedings for maintenance under Section 125 Cr.P.C. are of a summary nature and the purpose and object of the same is to provide immediate relief to the applicant.

38. The legislative scheme contained under Sections 125 to 127 Cr.P.C. being in the nature of a benevolent provision having a social purpose with the primary object to ensure social justice to the wife, child and parents, who are unable to support themselves so as to prevent destitution and vagrancy, the provisions contained therein have to be interpreted in a beneficent way so as to subserve the object of the enactment rather than to negate it.

39. The embargo under Section 362 Cr.P.C., when read in the context of the provisions of Sections 125-127 Cr.P.C., would have to be understood in a manner so as to advance the social object of the legislation rather than to whittle it down. It may be noticed that the embargo put by Section 302 on the court to alter or review its judgment or final order disposing of the case, is subject to certain exceptions contained therein. The legislature, was,

perhaps conscious that there may arise situations where altering or reviewing of a judgment would be contemplated under the provisions of the Code itself or any other law for time being in force, which is perhaps the reason that the exceptions to the general embargo, have been engrafted in the section itself.

40. In a situation where there is possibility of adopting differing constructions of a statutory provision, the duty of the court, applying the principle of purposive construction, would be to give effect to that construction which would advance the object for which the enactment has been made rather than to adopt that construction which would reduce the legislation to a futility.

41. It is beyond question, the duty of courts, in construing statutes, to give effect to the intent of the law makers and to seek for that intent in every way. The object and interpretation of construction of statutes is to ascertain the meaning of the legislation and to ensure that the provisions are interpreted so as to subserve that intent. There is a general presumption that an enactment has to be given a purposive interpretation with a construction that best gives effect to the purpose of the enactment.

42. The provision relating to orders for maintenance under Section 125 Cr.P.C., being in the nature of a 'social justice legislation', the role and duty of the Courts, in the said context, would be to understand the purpose of the enactment and to help the law achieve its objective.

43. Taking into the view the social objective of the legislative scheme with regard to grant of orders for maintenance, under Chapter IX of the Cr.P.C., and applying the principle of purposive construction, the provisions contained under Sections 125-127

when read in conjunction with Section 362, would lead to the conclusion that the embargo contained under Section 362, is expressly relaxed in proceedings under Section 125 Cr.P.C.

44. The embargo contained in Section 362 having been held to be relaxed in proceedings under Section 125 and the court having not become *functus officio* after passing of the final order, the recall application which had been filed seeking restoration of the case, could not have been rejected by assigning a reason that the Court was not empowered to entertain the same.

45. The order dated 02.01.2023 passed by the Principal Judge, Family Court, Agra in Misc. Case No. 2053 of 2022, in Maintenance Case No. 783 of 2014, is therefore unsustainable, and is, accordingly, set aside.

46. The matter is remitted to the court concerned for passing of a fresh order on the recall application, in the light of the observations made above.

47. The court concerned would be expected to make an endeavour to dispose of the recall/restoration application as expeditiously as possible.

48. The petition **stands allowed to the extent as indicated above.**

Order Date :- 16.5.2024
Arun K. Singh/Aiman

[Dr. Y.K. Srivastava, J.]