

CrPC, S. 125 - “Whether the Magistrate is precluded from passing multiple sentences by entertaining a consolidated application for recovery of dues beyond one month.” - (I) That the claimant/claimants would be entitled to file a consolidated application for recovery of previous 12 months dues. The consolidated application shall be treated as 12 individual claims for recovery of monthly allowances of previous 12 months. (II) That the Court will deal with the application in 12 separate compartments and shall issue separate warrants of recovery of every month’s dues, subject to the condition that the application shall not be entertained for maintenance dues beyond a period of 12 months. In the event of non-payment/non-recovery of the maintenance, the Court may pass separate sentences upon the defaulter extending to one month’s imprisonment for each default; (III) In cases where, no order of interim maintenance has been passed and the Court, while finally deciding the application for maintenance, orders that the maintenance shall be payable from the date of filing of the application, the claimant may file an application for recovery of the accrued amount and such application shall be considered to be within time if filed within 12 months from the date of the order.[Para 11, 12]

Held,

The proviso to Section 125(3) Cr.P.C. reads that “no warrant shall be issued for the recovery of any amount due under this Section unless the application be made to the Court to levy such amount within a period of one year from the date on which it became due. Thus, the proviso stipulates that an application has to be filed to the Court to levy the amount due and that such application should be made within a period of one year from the date on which the amount becomes due. The legislature has made it clear that even though the maintenance, which is awarded under Section 125 Cr.P.C., is recurring every month, an option has been given to the claimant to file an application for the recovery of the amount within a period of one year from the date on which it becomes due. There is no requirement in law that a separate application should be filed for every month’s maintenance. Thus, there is no doubt in the mind of this Court that the claimant/claimants can file a consolidated application for levying the amount due for the period of preceding 12 months and there is no impediment there against. A consolidated application would rather facilitate the procedural wrangles for the claimant and also, ease the burden on the Courts. Dealing with separate applications for each month’s default/dues would unnecessarily complicate the issues because it would require repetition of the entire procedure right from the issuance of recovery warrants against the defaulter for each month’s allowance and to wait for service thereof. Without any doubt, for defaults of 12 previous months, the Court may simultaneously issue separate warrants for levying every month’s due amount and if, despite service, the defaulter fails to make the payment, then separate sentences of imprisonment upto one month may be passed for every month’s default. Needless to say, the sentences would have to be passed by maintaining the sequence in the descending order of defaults limited upto previous 12 months.

Considering the plain language of Section 125(3) Cr.P.C., manifestly, an application for recoveries cannot be made for a period of more than one year’s arrears. However, we are

of the considered view that language of this Section is very restrictive and complicates the procedure of recovery of maintenance putting the destitute claimants to face unnecessary hurdles and undergo a cumbersome procedure of filing fresh applications, getting the notices thereof served upon the defaulter and thereby delaying the process of recovery. We therefore strongly feel that the appropriate Government should consider suitable amendments in Section 125 Cr.P.C. so that the procedure of recovery can be simplified. In the meantime, as an interim measure and in order to simplify the procedure and to avoid unnecessary delays, we hereby direct all the Magistrates/ Family Courts across the State of Rajasthan seized of the applications under Section 125 Cr.P.C., that after passing of the order, the Court shall facilitate the claimant to move an application for recovery of maintenance amount on the same day when the application is decided. The notice of the application shall be served on the defaulter on the date of the decision and consequently, he/she shall be under an obligation to deposit the maintenance amount by the particular date to be stipulated failing which, the Court may initiate the procedure of recovery in terms of Section 125(3) Cr.P.C. [Para 12]

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