

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES
[ISSN 2581-5369]

Volume 8 | Issue 3
2025

© 2025 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of any suggestions or complaints, kindly contact support@vidhiaagaz.com.

To submit your Manuscript for Publication in the International Journal of Law Management & Humanities, kindly email your Manuscript to submission@ijlmh.com.

Recovery of Maintenance under Section 125 CrPC via Levy Warrant: A Complex Maze of Legal Language

SHAUNAK SHARMA¹ AND FARAH MINHAI²

ABSTRACT

Under Section 125 of The Code of Criminal Procedure, 1973 (CrPC) obligation is casted on a person to provide maintenance to his wife and his/her parents who are unable to maintain themselves. A person also has an obligation to maintain his/her minor child who are physically or mentally disabled till they reach the age of majority. Further, a person is also obliged to maintain his legitimate and illegitimate child under this section. Section 125 of CrPC, was enacted to provide speedy remedy to the person entitled for maintenance. Therefore, the section also provides that interim maintenance may be granted by the court till the issue of maintenance is not decided on merit. The court can issue a warrant for levying the amount due against any person who has been ordered to pay maintenance. If the warrant is unsuccessful then the court may send the person in default to imprisonment of one month. Such warrant can be issued for each month's default. However, application should be made to the Court to levy such amount within a period of one year from the date on which it became due. It means that application for levy warrant to the court can only be made of any arrears of amount pending one year before the application. This limitation is contained in the first proviso of section 125(3) of CrPC. It is this interpretation of this proviso where often courts have made an error. Courts have at times misinterpreted this proviso. They have issued a levy warrant for recovery of arrears of amount due for more than one year prior to the date of recovery application. This paper is an attempt to find out the correct interpretation of the said proviso on the basis of various High Court and Supreme Court precedent. For the sake of convenience, this research paper is divided into three parts. The first part highlights the problem of issuance of levy Warrant for recovery of maintenance. Next part deals with the law on issuance of levy warrant for recovery of maintenance and also highlights the meaning and interpretation of the phrase "Date on Which Maintenance Amount Becomes Due". The third part analyses the Judicial Interpretation of the Law on Issue of Levy Warrant for Recovery of Maintenance and last part provides the conclusions and makes suggestion.

¹ Author is an Assistant Professor at Amity Law School, Raipur, Chhattisgarh, India.

² Author is an Assistant Professor at Amity Law School, Raipur, Chhattisgarh, India.

I. THE PROBLEM OF ISSUANCE OF LEVY WARRANT FOR RECOVERY OF MAINTENANCE

Often it happens that court issues interim maintenance against the husband for maintaining his wife. Section 125 CrPC³ empowers the court to order such maintenance and also to issue levy warrant in case the husband fails to pay the maintenance. However, the power of the court to issue such a warrant is not unfettered.⁴ The proviso to section 125(3) read as '*no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due.*'⁵ Hence, the court can't issue a warrant for recovery of amount for which application has been made one year from the date on which it was to be paid.⁶ For example, if an amount is due from 1 January 2024, then the application for its recovery has to be made at the maximum of one year from such date. The application of recovery has to be made on or before 1 January 2025 and not after it. Warrant can be issued to recover an amount due one year prior to the date of application. No warrant can be issued for recovery of any amount due one year prior to the application. However, it is submitted that lower courts in some of their judgements have been making an error in interpretation of the proviso to third clause of section 125 CrPC.⁷ They are issuing arrears of maintenance which is due for more than one year prior to the date of application for issuance of levy warrant. For example, if the amount of maintenance is due from 1 Jan 2023, then the proviso empowers the court to issue warrant for recovery of amount due from 1 Jan 2024 only, and no warrant can be issued to recover amount that is due from 1 Jan 2023 to 31 Dec 2024. Now a court erring on the interpretation of proviso of clause 125(3) issues the warrant for the amount due from 1 Jan 2023 to 31st December 2023.

This causes considerable problems for the party against whom maintenance is ordered. If the warrant is issued for recovery of any amount due prior to one year before the application then the amount to be paid becomes considerable higher. Higher amount creates hardship for the party against whom the maintenance is ordered. For example, an order of interim maintenance is issued for a monthly maintenance of 30,000 INR due from 1st January 2020. In this case warrant can be issued on 1 January 2025 for a monthly maintenance of thirty 30,000 INR that

³ Section 125 CrPC is now incorporated in section 144 of The Bharatiya Nyaya Sanhita (BNS), 2023. The part of the section 125 (3) analysed in this paper is same in new section 144 of BNS so this research work is also relevant to the new section 144 of BNS.

⁴ Proviso to § 125 (3) of The Code of Criminal Procedure, 1973.

⁵ *Ibid*

⁶ *Ibid*

⁷ In *Lav Kumar vs State of U.P. and Another* 2023: AHC:142640 and *Vikram Ramesh Rughani Son of Ramesh vs State of Maharashtra and Another* 2024: BHC-AS:8917 are cases where lower courts have made an error in interpretation of proviso of 125(3) of CrPC, 1973.

remains unpaid from 1st January 2024. The total the amount for which warrant is issued in this case will be 3,60,000 INR. However, if the warrant is wrongly issued for recovery of amount due from 1st Jan 2020, then the amount to be paid for the satisfaction of warrant will be 1800000 INR. It is submitted that this amount is considerably higher. Most parties belonging to middle class family in India will not be able to pay such a hefty sum at once. The law does not allow the maintenance holder to accumulate the monthly allowance for more than one year.⁸ It is submitted that there are precedents of various High Court and Supreme Court clearly stating that no warrant should be issued for arrears of maintenance due prior to one year of the application. An attempt has been made in the next two sections of the paper to clearly state the law regarding issuance of levy warrant for recovery of maintenance under section 125 CrPC, and to analyse the judicial pronouncement on the same. The next section states the law on issuance of levy warrant for recovery of warrant.

II. LAW ON ISSUANCE OF LEVY WARRANT FOR RECOVERY OF MAINTENANCE

Section 125 of CrPC allows a magistrate to order any person to provide maintenance to his wife, his/her parents and his/her minor child who are unable to maintain themselves. The said maintenance can be interim or final. Warrant can also be issued for recovery of maintenance. If a person who has been ordered to provide maintenance fails to pay maintenance, then the court has the power to issue a warrant for the recovery of the due amount. The relevant provision for recovery of unpaid maintenance is contained in clause three of section 125 CrPC.

Clause three of the section 125 CrPC reads as follows:

If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made :

*Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:*⁹

The above-mentioned provision clearly states a person can be sent to imprisonment for one

⁸ *Lav Kumar vs State of U.P. and Another* 2023: AHC:142640, Para 7

⁹ 2024:BHC-AS:8917

month for each month's default in payment of maintenance.¹⁰ Warrant can be issued by the magistrate to recover any unpaid amount provided that the application for issuance of warrant is filed within one year from the date on which the amount becomes due. No warrant can be issued if the application for said amount is filed after more than one year from the date such amount became due. In other words, no warrant can be issued for recovery of any arrears of money which was due one year before the application of issuance of warrant.

A. Date on Which Maintenance Amount Becomes Due

In the proviso the phrase '*date on which amount becomes due*' can be open to two interpretations in case maintenance order is made from a retrospective date. For example, an order of interim maintenance is issued for a monthly maintenance of 30,000 INR due from 1st January 2020 on 1st January 2025. An application for issuance of warrant for the recovery of maintenance amount is filed on 1 January 2025. Now the question of two alternative interpretation arises. It being that when the amount actually becomes due for payment? Whether it becomes due from the date on which payment had to be made i.e. from 1st Jan 2020? or it becomes due for payment from the date on which the order is made i.e. 1st Jan 2025? First interpretation can be that it becomes due from 1st Jan 2020. In that case no warrant can be issued for recovery of such amount as it is well before one year from the date of application. Then second interpretation can be that the amount is considered to become due from the date of order that is 1 January 2025. In that scenario, the amount due from 1st Jan 2020 can be recovered. This is so because the amount becomes due on 1 Jan 2025, and the application for issuance of warrant is made within one year of when it became due. The implication of both interpretations is huge. As one interpretation casts the liability of one years where as other interpretation casts liability of five years arrears. The difference in effect of two interpretation is like chalk and cheese. It is submitted that most courts have opted for the first interpretation mentioned above. However sometimes lower courts issues warrant for an amount pending for more than one year.¹¹ As noted above the implication of both type of interpretation is very different. It is a possibility that a judge may opt for second interpretation. As two different interpretations are possible of the phrase '*date on which amount becomes due*', the judge can't be blamed for interpreting the section one way or the other. The next section of the paper analyses various judicial interpretation of the law on issue of levy warrant for recovery of maintenance.

¹⁰ *Vikram Ramesh Rughani Son of Ramesh vs State of Maharashtra and Another*

¹¹ *Supranote 5*

III. JUDICIAL INTERPRETATION OF THE LAW ON ISSUE OF LEVY WARRANT FOR RECOVERY OF MAINTENANCE

*"The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law."*¹²

The above-mentioned quote is attributed to Oliver Wendell Holmes Jr. This statement reflects his legal philosophy, known as legal realism, which emphasizes the practical application and predictability of law rather than its theoretical underpinnings. Holmes argued that the law, in essence, is what courts actually do, not necessarily what is written in legal texts or pronouncements. The philosophy of Holmes is quite relevant today too and especially in the issue of interpretation of proviso of section 125 CrPC. The law might confer certain right or limitation of right on a person, but it is of no meaning if the same is not recognized by the Judge. It is in this context it is pertinent to find out the interpretation done by courts of the law on issuance of warrant for recovery of maintenance.

Very recently, the Bombay High Court interpreted the section 125 of CrPC, 1973 in the case of *Vikram Ramesh Rughani Son of Ramesh vs State of Maharashtra and Another*.¹³ In this case lower court has sentenced a husband for 47 months imprisonment for making a default on payment of monthly maintenance. The division bench of High Court reversed the decision stating that *'if an application cannot be filed seeking warrant for recovery of amount remaining unpaid for period of more than one year, there is no question of imprisonment being imposed for a term exceeding one year. The period of 12 months is the outer limit.'*¹⁴ Bombay High Court in this case has clearly stated that an application for recovery amount which is unpaid for more than one year is not maintainable.

In the case of *Lav Kumar vs State of U.P. and Another*¹⁵ court while interpreting the proviso of 125 (3) has mentioned that the maintenance holder cannot be allowed to accumulate the maintenance for more than 12 months.¹⁶ It further stated that 'no application for issuance of warrant for recovery of maintenance for a period exceeding 12 months immediately preceding the date of application' can be maintained.¹⁷

*Shantha @ Ushadevi & Anr vs B.G.Shivananjapp*¹⁸ is a case decided by the Supreme Court.

¹² Oliver Wendell Holmes Jr, The Path of the Law, 10 HARV.L REV. 457, 461 (1897).

¹³ 2024:BHC-AS:8917

¹⁴ Ibid, Para 14

¹⁵ 2023:AHC:142640

¹⁶ Ibid

¹⁷ Ibid para 7

¹⁸ Air 2005 Supreme Court 2410

In this case husband was ordered to pay maintenance to wife and daughter on 20th January 1993. Wife filed for recovery of maintenance within eight months of the order made on 20th January 1993. Her application being within eight months was not hit by limitation period of one year mentioned under section 123(3) of CrPC. However, no payment was made by husband and another application was filed by wife in the year 1998 claiming recovery of arrears from the year 1993 to the year 1998. Husband objected to this claim of the wife stating that the 2nd application of the wife is hit by limitation period of one year mentioned under section 123(3) of CrPC. Supreme Court rejected this argument of the husband. It stated that the second application was not a fresh application but it was an application which was in continuation of the first application filed in the year 1993. As the first application was not hit by the limitation period under section 125 (3) of CrPC, and the second application is a mere addendum to the first application, the wife's claim of arrears from the year 1993 is not barred.

It's clear from above judgment that the limitation period of one year under section 125(3) does not apply to the prospective default made by the party after the application for recovery has been made by the maintenance holder within the limitation period. It may seem on the first blush that there is contradiction between the view of the High courts mentioned above and Supreme Court. However, it is submitted that there is no contradiction whatsoever in the views of High Courts and Supreme Court. There is nothing in *Shantha @ Ushadevi & Anr vs B.G.Shivananjapp* which contradicts the position taken by the High Courts that warrant can't be issued for recovery of any amount due prior to one year before the application of recovery. Hence all the judicial pronouncement, be it of High Court or Supreme Court, states that no warrant can be issued for recovery any amount of maintenance pending for more than one year prior to the date of application.

IV. CONCLUSION

It is submitted that interpretation of proviso to Section 125(3) of CrPC by Bombay High Court, Allahabad High Court and Supreme Court is same. It can be concluded from the cited judgments in this paper that no warrant can be issued for recovery of maintenance amount due on year prior to date of application. As such there is no ambiguity in the provision neither is there any contradiction in judgements cited in this paper about the interpretation Section 125(3) of CrPC. However, it is also found that lower courts have at times misinterpreted the proviso of Section 125(3) and has issued warrant for recovery of maintenance amount pending for more than a year prior to date to application of recovery. This misinterpretation can wreak havoc on the life of party against whom the order is passed. He or she may end up going to jail for non-payment of maintenance amount for which a warrant should not have been issued.

The idea behind the limitation of one year in the proviso of Section 125(3) seems to be that the maintenance holder should not be allowed to accumulate the maintenance for more than one year. If the maintenance is allowed to accumulated for more than one year then the amount to be paid can become significantly more. A party against who the order is made may not be able to discharge the amount at one go and end up going to jail. This can be used tactically by party seeking interim maintenance to break the morale of party against whom maintenance is sought. Already, the law is skewed in favour of party seeking maintenance and for good reasons, and any misinterpretation of provision safeguarding the right of maintenance provider will further skew it towards maintenance seeker. That will be unjust and against the intention of the legislators.

It is submitted that misinterpretation of the proviso should be avoided at all cost. Ideally the precedents cited in this paper should be enough for avoiding any misinterpretation. However, some times the judgment might not be cited by the advocates, or sometimes court may misinterpret the section, or it may ignore the precedents. It would be unfair for the party providing maintenance to leave his or her fate on the contingencies like good advocacy, research skill and interpretation skill.

A better approach would be to add an explanation to the provision clearly stating that '*No warrant can be issued for recovery of any maintenance amount pending for more than a year prior to date of application for recovery of maintenance amount*'. Either the explanation provided in this paper can be used or a better drafted explanation can be used. This will also resolve the issue of two interpretation of the phrase '*date on which amount becomes due*' leaving no room of ambiguity. The law on recovery of maintenance is clear. It states that maintenance holder should not be allowed to delay the recovery of maintenance via issuance of warrant for more than one year, and it should be upheld because –

*'Delay does not matter in eternity but it's tragic in time'*¹⁹.

¹⁹ Helen Schucman, A course in Miracle, Chapter 5