# Sanjeev Kapoor vs Chandana Kapoor on 19 February, 2020

## Equivalent citations: AIR 2020 SUPREME COURT 1064, AIRONLINE 2020 SC 207 (2020) 4 SCALE 51, (2020) 4 SCALE 51

## Author: Ashok Bhushan

## Bench: R. Subhash Reddy, Ashok Bhushan



REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.286 OF 2020
(ARISING OUT OF SLP(CRL.)NO.1041 OF 2020)

SANJEEV KAPOOR ... APPELLANT

VERSUS

CHANDANA KAPOOR & ORS. ... RESPONDENTS

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal has been filed against the judgment of the High Court of Punjab and Haryana at Chandigarh dated 05.11.2019 in CRM-M-4663 of 2019 filed by the appellant for setting aside the order dated 05.01.2019 passed by the Addl. Principal Judge, Family Court, Faridabad. The High Court dismissed the petition filed under Section 482 Cr.P.C. by the appellant.

2. Brief facts of the case necessary for deciding this appeal are:

> The appellant was married to respondent No.1 on 04.11.1998. On 17.08.199 a daughter was born and on 18.07.2005 a son was born out of their wedlock. An application under Section 125 Cr.P.C. was filed by respondent No.1 on 09.07.2013 against her husband claiming maintenance for respondent No.1 as well as respondent Nos.2 and 3, minor daughter and son. On 14.10.2013 the appellant filed a petition for divorce against respondent No.1. On the reconciliation efforts made by the Family Court parties settled the matter amicably on the terms and conditions recorded separately in the Court. As per the settlement the appellant was to pay Rs.25,000/-

per month towards the maintenance of the respondents with effect from July, 2015 upto April, 2017. With effect from May, 2017, the amount of Rs.25,000/- per month was to be deposited directly in the account of Chandana Kapoor, respondent No.1 before 10th day of each month. The arrears were to be paid within six months. It was further contemplated that the appellant and respondent No.1 shall file petition for divorce by mutual consent by incorporating the terms and conditions. The maintenance petition was, thus, disposed of by the Family Court by order dated 06.05.2017.

3. The appellant from May, 2017 paid the maintenance only for four months i.e. Rs.1,00,000/-. Respondent No.1 filed an application in January, 2018 under Section 125(3) Cr.P.C. for enforcement of the order dated 06.05.2017 being Execution Petition No.240 of 2018. The Execution Petition filed by respondent No.1 was rejected by the Additional Principal Judge, Family Court, Faridabad vide order dated 16.07.2018. The Court held that order dated 06.05.2017 being purely conditional and was subject to the fulfilment of the respective obligations by the parties which they have not performed, the application under Section 125(3) Cr.P.C. was not maintainable.

4. After the application filed by respondent No.1 for execution of the order was rejected, respondent No.1 filed an application for recall the order dated 06.05.2017 on 31.07.2018. Respondent No.1 stated in the application that the appellant did not deposit the arrears of the amount as agreed and total amount paid by the appellant was only Rs.75,000/- towards maintenance. Respondent No.1 prayed that order 06.05.2017 may be recalled and application under Section 125(3) Cr.P.C. be restored and decided on merits after hearing the parties. The application filed by respondent No.1 was objected by the appellant by filing objection. In the objection, it was stated that the appellant had made payment of some amount as per terms since the respondent backed out, the payment was stopped.

5. The learned Additional Principal Judge, Family Court by order dated 05.01.2019 set aside the order dated 06.05.2017 restoring the petition under Section 125 Cr.P.C. Challenging the order dated 05.01.2019 passed by the Family Court, the appellant had filed application under Section 482 Cr.P.C. in the High Court which has been rejected by the High Court by order dated 05.11.2019. Aggrieved by the order dated 05.11.2019 of the High Court the appellant has filed this appeal.

6. Shri Subodh Markandeya, learned senior counsel for the appellant submits that the application under Section 125 Cr.P.C. filed by respondent No.1 having been finally decided by order dated 06.05.2017 by the learned District Judge, Family Court, Family Court had no jurisdiction to set aside the order. The impugned order dated 05.01.2019 is without jurisdiction and is in the teeth of provision of Section 362 Cr.P.C.

7. It is submitted that according to the Section 362 Cr.P.C. the Court cannot alter or review the judgment except to correct a clerical or arithmetical error. It is submitted that order dated 05.01.2019 of the Principal Judge, Family Court being contrary to Section 362 Cr.P.C. is void. He submits that the High Court committed error in not setting aside the order dated 05.01.2019.

8. Learned counsel for the appellant in support of his submission has relied on several judgments of this Court which shall be noticed hereinafter.

9. The respondent appeared through counsel on caveat. Learned counsel for the respondent supported the impugned judgment of the High Court.

10. We have considered the submissions of the learned counsel for the parties and perused the records.

11. The only point to be determined in this appeal is as to whether the order passed by the Additional Principal Judge, Family Court dated 05.01.2019 setting aside the order dated 06.05.2017 disposing of the application under Section 125 Cr.P.C. and restoring the application under Section 125 Cr.P.C. was contrary to Section 362 Cr.P.C. which provides that no Court can alter or review its judgment except for correcting a clerical or arithmetical mistake. Section 362 Cr.P.C. contained in Chapter XXVII "THE JUDGMENT" is to the following effect:

> "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."

12. We may first notice the judgments which have been relied by the learned counsel for the appellant in support of his submission. The first judgment which has been relied by the learned counsel for the appellant is in Sankatha Singh vs. State of U.P., 1962 AIR 1208. In the above case when a criminal appeal came for hearing before the trial court, the trial court dismissed the appeal, noticing that the appellants have been absent, and their counsel has not appeared to argue the appeal. The Court also observed that it had perused the judgment of the Magistrate and seen the record and there is no ground for interference. An application was filed before the Appellate Court for restoration of the appeal which was allowed by the learned Sessions Judge. However, when the appeal was again listed for hearing the learned Judge took the view that the Appellate Court had no power to review or restore an appeal which had been disposed of. The appeal was dismissed. The criminal revision was filed in the High Court which too was dismissed. This Court in the above case had occasion to consider Section 369 of Criminal Procedure Code, 1898 which is now Section 362 of Criminal Procedure Code, 1973. This Court held that Section 369 of the Code prohibited the Courts from reviewing or altering its judgment. Following was laid down by this Court:

> "It has been urged for the appellants that Shri Tej Pal Singh could order the rehearing of the appeal in the exercise of the inherent powers which every court possesses in order to further the ends of justice and that Shri Tripathi was not justified in any case to sit in judgment over the order of Shri Tej Pal Singh, an order passed within jurisdiction, even though it be erroneous. Assuming that Shri Tej Pal Singh, as Sessions Judge, could exercise inherent powers, we are of opinion that he could not pass the order of the rehearing of the appeal in the exercise of such powers when Section 369, read with Section 424 of the Code, specifically prohibits the altering or

reviewing of its order by a court. Inherent powers cannot be exercised to do what the Code specifically prohibits the court from doing. Shri Tripathi was competent to consider when the other party raised the objection whether the appeal was validly up for rehearing before him. He considered the question and decided it rightly.

It is also urged for the appellants Shri Tej Pal Singh had the jurisdiction to pass orders on the application presented by the appellants on December 17, 1956, praying for the rehearing of the appeal and that therefore his order could not be said to have been absolutely without jurisdiction. We do not agree. He certainly had jurisdiction to dispose of the application presented to him, but when Section 369 of the Code definitely prohibited the court's reviewing or altering its judgment, he had no jurisdiction to consider the point raised and to set aside the order dismissing the appeal and order its rehearing."

13. Next judgment cited is Smt. Sooraj Devi vs. Pyare Lal and another, AIR 1981 SC 736, where Section 362 Cr.P.C. came for consideration. This Court laid down following:

"The appellant points out that he invoked the inherent power of the High Court saved by Section 482 of the Code and that notwithstanding the prohibition imposed by Section 362 the High Court had power to grant relief. Now it is well settled that the inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code (Sankatha Singh v. State of U.P.). It is true that the prohibition in Section 362 against the court altering or reviewing its judgment is subject to what is "otherwise provided by this Court or by any other law for the time being in force". Those words, however, refer to those provisions only where the court has been expressly authorised by the Code or other law to alter or review its judgment. The inherent power of the court is not contemplated by the saving provision contained in Section 362 and, therefore, the attempt to invoke that power can be of no avail."

14. Next judgment relied is Mostt. Simrikhia vs. Smt. Dolley Mukherjee @ Smt. Chhabimukherjee & another, AIR 1990 SC 1605, in which this Court held:

"Section 362 of the Code expressly provides that 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 save as otherwise provided by the Code. Section 482 enables the High Court to make such order as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. The inherent powers, however, as much are controlled by principle and precedent as are its express powers by statute. If a matter is covered by an express letter of law, the court cannot give a go-by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction."

15. To the same effect, is the judgment of this Court reported in Hari Singh Mann vs. Harbhajan Singh Bajwa & others, 2001 (1) SCC 169, which has been relied by the appellant.

16. Next case relied is State vs. K.V. Rajendran and others, 2008(8) SCC 673. This Court had occasion to consider Section 362 and Section 482 Cr.P.C. In the above case relying on the judgment of this Court in Mostt. Simrikhia vs. Smt. Dolley Mukherjee (supra) this Court laid down in paragraph 18:

"18. Keeping the principles, as laid down by the aforesaid decisions of this Court in mind, let us now look to Section 362 of the Code, which expressly provides that no court which has signed its judgment and final order disposing of a case, shall alter or review the same except to correct clerical or arithmetical error save as otherwise provided by the court. At this stage, the exercise of power under Section 482 of the Code may be looked into."

17. Learned counsel for the appellant has also referred to judgment of this Court in Mahua Biswas(Smt.) vs. Swagata Biswas and another, (1998) 2 SCC 359. In the above case, in the proceedings under Section 125 Cr.P.C. parties compromised and started living together but later fell apart. An objection was raised by the husband that order of maintenance could not be revived with which High Court agreed. This Court revived the maintenance application by allowing the appeal. In paragraph 3 following was held:

"3. The matter can be viewed from either angle. It can be viewed that there was a genuine effort by the wife to rehabilitate herself in her matrimonial home but in vain. The previous orders of maintenance in a manner of speaking could at best be taken to have been suspended but not wiped out altogether. The other view can be that the maintenance order stood exhausted and thus she be left to fight a new litigation on a fresh cause of action. Out of the two courses, we would prefer to adopt the first one, for if we were to resort to the second option, it would lead to injustice. In a given case the wife may then be reluctant to settle with her husband lest she lose the order of maintenance secured on his neglect or refusal. Her husband on the other side, would jump to impromptu devices to demolish the maintenance order in duping the wife to a temporary reconciliation. Thus, in order to do complete justice between the parties, we would in the facts and circumstances activate the wife's claim to maintenance and put her in the same position as before. Evidently, she has obtained a maintenance order at a figure which was taken into account by the Court of the C.J.M. Taking that into account, we order the husband to pay to his wife and the daughter a sum of Rs 1000 each, effective from 1-10-1997. The sum of Rs 12,000 which was earlier ordered by this Court to be paid to the wife and her daughter as arrears of maintenance shall be taken to have been duly paid uptil 30-9-1997, irrespective of the rate of maintenance. This streamlines the dispute between the parties. It is made clear that it is open to the parties to claim such other relief as may be due to him/her by raising a

matrimonial dispute before the matrimonial court."

> 18. The Legislative Scheme as delineated by Section 369 of Code of Criminal Procedure, 1898, as well as Legislative Scheme as delineated by Section 362 of Code of Criminal Procedure, 1973 is one and the same. The embargo put on the criminal court to alter or review its judgment is with a purpose and object. The judgments of this Court as noted above, summarised the law to the effect that criminal justice delivery system does not cloth criminal court with power to alter or review the judgment or final order disposing the case except to correct the clerical or arithmetical error.

After the judgment delivered by a criminal Court or passing final order disposing the case the Court becomes functus officio and any mistake or glaring omission is left to be corrected only by appropriate forum in accordance with law.

19. In the present case, we are concerned with the order passed by the Court under Section 125 Cr.P.C. Whether the embargo contained in under Section 362 Cr.P.C. prohibiting the court to alter or review its judgment or final order disposing the case applies to order passed under Section 125 Cr.P.C. is the question to be answered in the present case.

20. Section 362 Cr.P.C. begins with the word "save as otherwise provided by this Code or by any other law for the time being in force". The above expression clearly means that rigour as contained in Section 363 Cr.P.C. is relaxed in following two conditions: -

i) Save as otherwise provided by the code of Criminal Procedure.

ii) any other law for the time being in force.

21. We need to first examine as to whether the orders passed in present case are covered by the exception i.e. "save as otherwise provided by the Code". Section 362 Cr.P.C., thus, although put embargo on the criminal Court to alter or review its judgment or final order disposing the case but engrafted the exceptions as indicated therein. The legislature was aware that there are and may be the situations where altering or reviewing of criminal court judgment is contemplated in the Code itself or any other law for the time being in force. We since in the present case are concerned only with Section 125 Cr.P.C., we need to examine as to whether Section 145 Cr.P.C. in any manner relaxed the rigour of Section 362 Cr.P.C..

22. Before we proceed to look into the Legislative Scheme of Section 125 Cr.P.C., we need to notice few rules of interpretation of statutes when court is concerned with interpretation of a social justice legislation. Section 125 Cr.P.C. is a social justice legislation which order for maintenance for wives, children and parents. Maintenance of wives, children and parents is a continuous obligation enforced. This Court had occasion to consider the interpretation of Section 125 Cr.P.C. in Badshah versus Urmila Badshah Godse and another, (2014) 1 SCC 188. In paragraphs 13.3 to 18, following has been laid down: -

> "13.3. Thirdly, 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.
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> 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.
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> Apart from the social-economic inequalities accentuating the
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> 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."
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> 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.
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> 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:
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> "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. We already have examples of exemplary efforts in this regard.

Journey from Shah Bano to Shabana Bano guaranteeing maintenance rights to Muslim women is a classical example.

23. The closer look of Section 125 Cr.P.C. itself indicates that the Court after passing judgment or final order in the proceeding under Section 125 Cr.P.C. does not become functus officio. The Section itself contains express provisions where order passed under Section 125 Cr.P.C. can be cancelled or altered which is noticeable from Section 125(1), Section 125(5) and Section 127 of Cr.P.C., which are to the following effect: -

"125(1). 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 that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, 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 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.

125(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."

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

"Time to time. As occasion arises"

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

26. Section 127 Cr.P.C. also discloses the legislative intendment where the Magistrate is empowered to alter an order passed under Section 125 Cr.P.C. Sub-Section (2) of Section 127 Cr.P.C. also empower the Magistrate to cancel or vary an order under Section 125. The Legislative Scheme as delineated by Sections 125 and 127 Cr.P.C. as noted above clearly enumerated the circumstances and incidents provided in the Code of Criminal Procedure where Court passing a judgment or final order disposing the case can alter or review the same. The embargo as contained in Section 362 is, thus, clearly relaxed in proceeding under Section 125 Cr.P.C. as indicated above.

27. The submissions which have been pressed by the learned counsel for the appellant were founded only on embargo of Section 362 and when embargo of Section 362 is expressly relaxed in proceeding under Section 125 Cr.P.C., we are not persuaded to accept the submission of counsel for the appellant that the Family Court was not entitled to set aside and cancel its order dated 06.05.2017 in facts and circumstances of the present case.

28. As noted above, the proceeding under Section 125(1) Cr.P.C. was disposed of on a settlement entered between the parties. The order passed by Family Court on 06.05.2017 is as follows: -

> "Reconciliation efforts made in this Chamber of the under signed. Parties have settled the matter amicably on the terms and conditions recorded separately in the court today. As per which, the respondent/Sanjay Kapoor shall pay Rs.25,000/- per month towards the maintenance of petitioner no.1 and 3 with effect from July 2015, out of which the arrears of amount of maintenance up to May to April 2017 shall be paid by him in the bank account of petitioner no.1 Chandana within six months form today and account of maintenance of Rs.25,000/- per month with effect from May 2017 shall be paid by him in the bank account of Chandana month to month on or before 10th day of each Calendar month. The parties shall be bound by their statement. In view of the statement recorded in the court today, the instant petition stands disposed of accordingly, and respondent/Sanjay Kapoor shall pay a sum of Rs.25000/- per month to petitioner no.2 and 3 time to time, which shall be deposited directly in the bank account of Chandana. He shall clear the arrears of amount of maintenance @ Rs.25,000/- per month payable with effect from July 2015 to April 2017 within six months. In case of non-fulfilment of commitment made by Sanjeev Kapoor, the petitioners shall be at liberty to proceed as per law. File, after needful, be consigned to records.
>
> Sd/-

Sartaj Baswana District Judge, Family Court- II Faridabad UID No.HR.0487"

29. It has come on the record that after passing of the above order on settlement, the appellant according to his own case has paid only an amount of One Lakh Rupees, i.e. maintenance of four months after May 2017.

The arrears from July, 2015 to April 2017 has not been paid by the appellant within six months which was time allowed by the Court. When the appellant did not honour its commitment under settlement, can the wife be left in lurch by not able to press for grant of maintenance on non-compliance by the appellant of the terms of settlement. The answer is obviously 'No'. Section 125 Cr.P.C. has to be interpreted in a manner as to advance justice and to protect a woman for whose benefit the provisions have been engrafted.

30. We have noticed the judgment of this Court in Mahua Biswas (Smt)(supra) where this Court had activated the wife's claim of maintenance to put her at same position before parties compromised in proceeding under Section 125 Cr.P.C. Although learned counsel for the appellant submits that the judgment of this Court in Mahua Biswa (Smt) is not applicable, we do not agree with the submission. In the above case, order was passed by the Magistrate giving maintenance of token amount against which she moved to the High Court for revision where it was noticed that matrimonial case between the parties had stood compromised and one of the terms was that wife would go and live with her husband. The wife went to live with husband but later the spouse fell apart. Husband contended that the orders of maintenance could not be revived as there had arisen a fresh cause of action. The High Court had set aside the order of maintenance leaving the wife to approach again the Criminal Court for appropriate relief. This Court allowing the appeal had activated the wife's claim of maintenance and put her in the same position as before. The above judgment clearly indicates that this Court adopted the Course which avoided injustice to the wife.

31. We, thus, are of the considered opinion that the order passed in present case by Family Court reviving the maintenance application of the wife under Section 125 Cr.P.C. by setting aside order dated 06.05.2017 passed on settlement is not hit by the embargo contained in Section 362 Cr.P.C. The submission of learned senior counsel for the appellant that Section 362 Cr.P.C. prohibit the Magistrate to pass the order dated 05.01.2019 cannot be accepted.

32. The High Court did not commit an error in rejecting the application filed by appellant under Section 482 Cr.P.C. The inherent powers of the High Court given under Section 482 Cr.P.C. are to be exercised to secure the ends of justice. The Family Court in passing order dated 05.01.2019 has done substantial justice in reviving the maintenance application of the wife which need no interference by the High Court in exercise of its jurisdiction under Section 482 Cr.P.C.

33. We, thus, do not find any merit in this appeal. The appeal is dismissed.

.....J. ( ASHOK BHUSHAN ) .....J. ( R. SUBHASH REDDY ) New Delhi, February 19, 2020.