



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

CRL.RC.(MD)No.163 of 2014

and

M.P.No.1 of 2014

R.Panner Selvam : Petitioner/1st Respondent/Respondent
Vs.
1.Saraswathy : 1st respondent/Petitioner/1st petitioner
2.Block Medical Officer,
Primary Health Officer,
Nagudi [Post], Aranthangi Taluk,
Pudukkottai District. : 2nd Respondent/2nd Respondent/3rd party

PRAYER: Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records relating to the order dated 05.10.2013 in Cr.M.P.No.74 of 2012 in M.C.No.16 of 2007 on the file of the Family Court, Madurai and set aside the same by allowing this Criminal Revision Case.

For Petitioner : Mr.K.Baalasundaram

For Respondent No.1 : Mr.K.Balamurugan

For Respondent No.2 : Mr.P.Kannithevan

Government Advocate [Criminal Side]

O R D E R

The petitioner is the husband of the first respondent herein. He is employed in Government Service under the second respondent. The first respondent filed M.C.No.16 of 2007, on the file of the Family Court, Madurai, under Section 125 of the Code of Criminal Procedure, claiming maintenance.

2. The Trial Court, by order dated 20.07.2009, directed the petitioner to pay a sum of Rs.2,500/- to the first petitioner and a sum of Rs.1,500/- to her sons. As against the same, the petitioner filed a revision before this Court in Crl.RC[MD].No.620 of 2009. During the pendency of the said Revision a compromise was reached between the petitioner and the first respondent, by which the petitioner agreed to pay a sum of Rs.6,00,000/- in full settlement to the first respondent and her children as against all the claims made. It was also agreed upon in the compromise, which is incorporated in Paragraph No.4 of memo, which reads as follows:-

"The appellant agrees to meet out the educational expenses [special fees, tuition fees and books] of the respondents 2 and 3 at the time of their joining the professional colleges."

3. In the said Criminal Revision Case, the respondents 2 and 3 have been shown as "Minor P.S.Santhosh and Minor P.S.Manikandan", who are the children of the petitioner and the first respondent. Accepting the said compromise and acting on the same, this Court disposed of the said

revision in terms of the compromise memo, by order dated 12.04.2010. The said order has become final.

4. It is admitted by the parties that as agreed upon, the petitioner has paid a sum of Rs.6,00,000/- in two installments to the first respondent. The grievance of the first respondent is that the petitioner has not complied with clause 4 of the compromise memo, wherein he had agreed to meet out the educational expenses of the children, viz., Minor P.S.Santhosh and Minor P.S.Manikandan. In those circumstances, the petitioner filed Cr.M.P.No.74 of 2012 under Section 128 of the Code of Criminal Procedure seeking to enforce clause 4 of the compromise memo, which forms part of the order passed by this Court. The Lower Court, by order dated 05.10.2013, has ordered to attach a sum of Rs.7,000/- per month from and out of the salary of the petitioner and the second respondent herein, the employer of the petitioner, has been directed to send the attached amount to the Court. Challenging the said order, the petitioner has come up with the present Criminal Revision Case.

5. I have heard the learned counsel appearing for the petitioner, the learned counsel appearing for the first respondent, the learned Government Advocate appearing for the second respondent and perused the records carefully.

6. The learned counsel appearing for the petitioner would raise number of grounds, including the technical ground that the petition filed by the respondents before the Lower Court, representing her children, who have become majors, is not maintainable. The learned counsel would further submit that the petition filed by the respondents under Section 128 of the Code of Criminal Procedure is barred by limitation. He would also submit that at any rate, without knowing the exact amount of arrears, passing an order of attachment of Rs.7,000/- is illegal, as it may amount to even excessive attachment.

7. Having heard the said submissions, the learned counsel appearing for the first respondent would submit that insofar as the exact amount, which has fallen in arrears, is concerned, the first respondent had not let in any evidence. To that extent, he would, therefore, submit that the order of attachment is imperfect. Insofar as the other grounds raised in this revision are concerned, the learned counsel would submit that they are all matters to be adjudicated upon by the Trial Court.

8. I have considered the above submissions. In my considered view, the order of attachment passed by the Lower Court is illegal, inasmuch as without ascertaining the exact amount, which has fallen in arrears, passing a mechanical order of attachment at the rate of Rs.7,000/- for all years to come is illegal. It would have been appropriate for the Lower Court to call upon the parties to lead evidence, arrive at an exact amount, which has fallen in arrears and then to make an attachment to recover the amount, in which case, there can be no allegation of excessive attachment.

9. In view of the above position, I am inclined to set aside the order of the Lower Court. Regarding the other grounds raised by the learned counsel for the petitioner before this Court, I do not want to express any opinion, as these are all matters to be adjudicated upon by

the Trial Court and therefore, they are all left open.

10. In the result, this Criminal Revision Case is partly allowed and the impugned order dated 05.10.2013 is set aside and Cr.M.P.No.74 of 2012 in M.C.No.16 of 2007, is remanded back to the file of the Family Court, Madurai. The Family Court shall dispose of the same, after affording sufficient opportunity to the parties to lead evidence both oral and documentary, if any, within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Per.Admn)

/True copy/

Sub Assistant Registrar

To

1.The Judge, Family Court, Madurai.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

3.The Block Medical Officer,
Primary Health Officer,
Nagudi [Post], Aranthangi Taluk,
Pudukkottai District.

+1cc to M/s.S.Balamurugan, Advocate in SR.No. 20053

+1cc to M/s.K.Balasundaram, Advocate in SR.No. 19450

Sm:28.04.2015:3P/6C

NB

ORDER MADE IN
CRL.RC.(MD)No.163 of 2014
DATED - 17.04.2015