



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2015

CORAM

THE HONOURBLE MR.JUSTICE M.SATHYANARAYANAN

Cr1.R.C.(MD).No.42 of 2015

and

M.P.(MD)No.1 of 2015

N.Jeyachandran

..Revision petitioner/Respondent/Respondent

Vs.

Mrs.J.Meena

..Respondent/Petitioner/Petitioner

Criminal Revision Case is filed under Section 397 r/w 401 Cr.P.C. against the docket order in C.M.P.No.408 of 2013 in M.C.No.20 of 2005 dated 19.07.2013 passed by the learned Chief Judicial Magistrate, Trichy under Section 128 Cr.P.C.

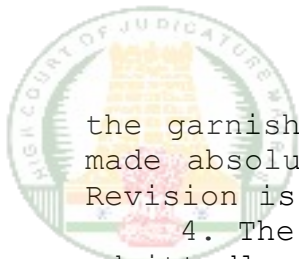
For Petitioner : Mrs.Krishnaveni for
Mrs.T.Jayanthi Rani
For Respondent : Mrs.J.Meena
party-in-person

ORDER

It is not in dispute that the respondent is the wife of the revision petitioner and out of wedlock, two female children and a male children were born and all of them had attained the age of majority.

2. The respondent has filed M.P.(MD)No.2 of 1998 on the file of Court of Judicial Magistrate No.5, Trichirappalli under Section 125 Cr.P.C. claiming maintenance at the rate of Rs.800/- p.m. for all of them and on account of the compromise entered into between the parties outside the Court, the said petition was dismissed as not pressed vide order dated 11.01.1999. Thereafter, the petitioner for herself and on behalf of her children filed M.C.No.20 of 2005 on the file of the Chief Judicial Magistrate, Trichirappalli claiming maintenance and the petitioner herein, who was arrayed as respondent, in spite of service of summons, did not appear and hence remained exparte and the said Court vide order dated 12.05.2005, has dismissed the petition in so far as the children are concerned, but granted maintenance in favour of the respondent herein at the rate of Rs.1,500/- p.m. The said order has become final as it was not put to challenge. Thereafter, the respondent herein filed Cr1.M.P.No.1362 of 2006 under Section 128 Cr.P.C. for enforcing the order of maintenance stating among other things that the petitioner was employed as a driver in the services of Tamil Nadu Metropolitan Transport Corporation, Chennai and in spite of having means to pay the maintenance, he did not pay the same. The Court of chief Judicial Magistrate, vide order dated 19.09.2011 has also passed an order directing his employee to attach and recover the sum of Rs.3,000/- and pay the same directly to the respondent by way of Demand Draft and it was complied with and it is brought to the knowledge of this Court that the petitioner was retired from service during December 2014.

3. Thereafter, the petitioner filed Cr1.M.P.No.408 of 2013 under Section 128 Cr.P.C. to get the arrears of maintenance and vide order dated 19.07.2013, the trial Court has passed an order to the effect that



the garnishee did not file any attachment and hence, the attachment is made absolute. Challenging the legality of the said order, the present Revision is filed.

4. The learned counsel for the revision petitioner would contend that admittedly the revision petitioner is gainfully employed and that the respondent is retired from service due to heart ailment and other related ailments and after giving credit of lump sum amount towards arrears of maintenance, a negligible sum of money only is due and payable to the petitioner and since no proper opportunity has been given to the employer to contest the claim, she prays for setting aside the said order.

5. Per contra, the respondent/party-in-person would contend that in spite of having means to pay the maintenance, the respondent has deliberately chosen not to pay the arrears and all along, she only brought her three children and being the father of the three children and her husband, failed to perform his obligation and prays for dismissal of this revision.

6. This Court has carefully considered the rival submissions made by both sides and also perused the materials available on record.

7. The fact remains that the order dated 12.05.2005 in M.C.No.20 of 2005 awarding maintenance has become final and the present petition is filed under Section 128 Cr.P.C. to enforce the order of maintenance and recover the arrears.

8. It is submitted by the learned counsel for the revision petitioner that during pendency of the petition, amount has been paid.

9. In such circumstances, this Court is of the view that in respect of the balance amount, remain unpaid, the respondent is having every right to enforce the said order by invoking Section 128 Cr.P.C. In the light of the factual and legal positions, this Court is of the view that the impugned order warrants no interference.

10. In the result, the Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(Per Admn)

/True copy/

Sub Assistant Registrar

To

The Chief Judicial Magistrate, Trichy.

+1CC to M/s.A.Haja Mohideen, Advocate in SR.14392

+1CC to M/s.J.Meena Advocate in SR.14011

Cr1.R.C.(MD).No.42 of 2015
and

M.P.(MD)No.1 of 2015

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