

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION Nos.199, 201, 203 AND 209 OF 2015

COMMON ORDER:

These Criminal Petitions, under Section 482 of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C. '), are filed challenging the warrants issued by the Judicial Magistrate of First Class, Ichapuram, for attachment of salary of the petitioner herein, by exercising power under sub-Section (3) of Section 125 of Cr.P.C., in the applications filed by the first respondent herein for realization of the maintenance amount for different periods.

The details of maintenance amount for different periods are mentioned hereunder for better appreciation:

Sl.No.	CrI.P. No.	M.P. No.	Period	Mainte- nance awarded per month	Total amount
01.	199 of 2015	428 of 2010	05.12.2008 to 06.06.2010	500/-	16,000/-
02.	201 of 2015	73 of 2014	07.02.2013 to 07.07.2014	500/-	16,000/-
03.	203 of 2015	26 of 2013	07.06.2010 to 06.02.2013	500/-	16,000/-
04.	209 of 2015	1993 of 2008	04.08.2007 to 04.12.2008	500/-	16,000/-

The case of the petitioner, in brief, is that the maintenance order was passed on 14.10.1996 in M.C. No.13 of 1994 awarding maintenance at Rs.200/- per month to the first respondent from the date of filing petition and by order dated 11.04.2000 in M.C. No.1 of 2000, the petitioner was directed to

pay monthly maintenance at enhanced rate of Rs.500/- per month. Thereafter first respondent filed the petition for realization of arrears of maintenance by attachment of salary of petitioner accordingly, the salary attachment warrants were issued for recovery of monthly maintenance amount at enhanced rate in M.C.No. 1 of 2000 dated 11.04.2000, for different periods referred to supra. The main challenge of the petitioner is that the claim of the first respondent for recovery of maintenance amount, for different periods referred to supra, is barred by limitation under sub-Section (3) of Section 125 of Cr.P.C. and that the trial court did not afford any opportunity to him as required under sub-Section (3) of section 125 of Cr.P.C. and salary attachment warrant issued straight away without affording an opportunity to explain the reason for non-payment of maintenance, is in violation of principles of natural justice, and therefore, warrants issued for attachment of salary, for realization of the maintenance amount, is erroneous and prayed to set aside the same.

Learned counsel for the petitioner, during hearing, contended that issue of warrants for recovery of maintenance amount is illegal for the simple reason that no opportunity was afforded to explain the reason, thereby issue of warrant is violation of principles of natural justice and liable to be set aside. He also contended that the claim for various periods referred to supra is barred by limitation and at best, the first respondent is entitled to recover the maintenance for one year prior to the date of filing the petition, but the trial court did not

consider the same in proper perspective and prayed to set aside the same.

Learned counsel for the first respondent contended that the bar contemplated under sub-Section (3) of Section 125 of Cr.P.C. has no application and the maintenance amount can be recovered irrespective of the period fixed in sub-Section (3) of Section 125 of Cr.P.C. and placed reliance on the Judgment of the Apex Court in **UTTAM DAS V. STATE OF WEST BENGAL AND ANOTHER¹, SHANTHA, USHA DEVI V. B.G.SHIVANANJAPPA² and POONGODI AND ANR. V. THANGAVEL³** in support of his contention and prayed to confirm the warrants, for attachment of salary of the petitioner, issued by the Judicial Magistrate of First Class, Ichapuram.

The first and foremost contention of the counsel for the petitioner is that necessary procedure is prescribed under sub-Section (3) of Section 125 of Cr.P.C. for realization of the maintenance amount awarded to the wife, children and parents.

According to sub-Section (3) of Section 125 of Cr.P.C., 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 expense of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may

¹ 2012 CJ (Cal) 1133

² 2005 CJ (SC) 1225

³ 2013 CJ (SC) 2130

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.

A bear reading of sub-Section (3) of Section 125 of Cr.P.C. it is clear that if the husband failed to pay monthly maintenance without sufficient cause, necessary procedure to be followed by the Magistrate on application filed by the wife or children or parents. Therefore, the language used in sub-Section (3) “if any person so ordered fails without sufficient cause to comply with the order,.....” indicates that an opportunity has to be afforded to explain the cause for non compliance of the order for payment of maintenance. But here the learned Magistrate straight away issued warrant for attachment of salary without affording opportunity to the petitioner to explain the reason or cause much less sufficient cause for non compliance of the order passed by the learned Magistrate, awarding maintenance. Thus, the warrant issued by the learned Magistrate without affording sufficient opportunity to explain the reason for breach of order is in clear violation of principles of natural justice. Sub-Section (3) of Section 125 of Cr.P.C. refers to the enforcement of order passed under sub-Section (1) Non-payment “without sufficient cause” is sufficient. There are two views, one view is that failure of the husband to apply under Section 127 or to obtain a cancellation under sub-Section (5) does not stand in the way of the consideration of his objection to execution on account of

adultery etc., in sub-Section (4) and the Magistrate is bound to consider the sufficiency of the cause alleged, the other view is that when an order granting maintenance to the wife was passed, the executing court had no power of withholding execution on a finding of its own that the wife has been divorced by the husband. The words 'without sufficient cause' obviously refer to the explanation for carrying out the order to pay maintenance. The validity of the order cannot be challenged and the Magistrate cannot consider those very questions which could be raised or which were decided when claim for maintenance was upheld. Thus, it is obligatory on the part of the Magistrate to call for explanation for his failure to comply the order in view of the specific language used in sub-Section (3) of Section 125 of Cr.P.C. Even otherwise, when straight away issued a warrant for realization of the maintenance for various periods, without affording any opportunity to explain the reason amounts to, violation of principles of natural justice and on this ground alone the warrant is liable to be set aside.

On over all consideration of the entire material on record, it is evident that the learned Magistrate issued warrant for recovery of maintenance amount for different periods without ordering notice before issue of warrant and without affording opportunity to the petitioner, to explain the reasons for non compliance of the order under sub-Section (1) of Section 125 of Cr.P.C. Therefore, the procedure adopted by the learned Magistrate in issue of attachment warrant for realization of the maintenance amount for different periods referred supra is in

violation of the mandatory procedure provided under sub-Section (3) of Section 125 of Cr.P.C. and also in clear violation of principles of natural justice. Therefore, on this ground, the warrants of attachment for recovery of maintenance amount issued by the Judicial Magistrate of First Class, Ichapuram, are hereby set aside.

The petitioner also raised a specific ground that the claim of the first respondent is barred by limitation in view of the Proviso to sub-Section (3) of Section 125 of Cr.P.C. whereas the counsel for the first respondent contended that it is within time as required the second Proviso to sub-Section (3) of Section 125 of Cr.P.C. and placed reliance on the judgments referred to supra.

In view of my finding in the earlier paragraphs, I need not decide the bar of limitation of the claim of the first respondent for recovery of arrears of maintenance, for different periods referred to supra.

In view of my foregoing discussion, warrants of attachment for recovery of maintenance amount in M.P. Nos.428 of 2010, 73 of 2014, 26 of 2013, 1993 of 2008 in M.C. No.1 of 2000 issued by the Judicial Magistrate of First Class, Ichapuram, Srikakulam District, Andhra Pradesh, are liable to be set aside.

Accordingly, the criminal petitions are allowed, warrants of attachment for recovery of maintenance amount in M.P. Nos.428 of 2010, 73 of 2014, 26 of 2013, 1993 of 2008 in M.C. No.1 of 2000 issued by the Judicial Magistrate of First Class,

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Ichapuram, Srikakulam District, Andhra Pradesh, are set aside, remanding the matter, directing the learned Magistrate to follow the procedure provided under Section 125 (3) of Cr.P.C., to enable the petitioner herein to explain the reason for his failure to comply with the order passed under Section (1) of Section 125 of cr.P.C. and thereafter take necessary steps, in accordance with law. It is left open to both parties to raise all legal pleas, including the limitation under the proviso to sub-Section (3) of Section 125 of Cr.P.C.

Miscellaneous petitions, if any, pending in these criminal petitions shall stand closed.

M. SATYANARAYANA MURTHY, J

23-01-2017
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