



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2018

CORAM:

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

Crl.R.C(MD)No.257 of 2018
and
Crl.M.P. (MD) .No.3512 of 2018

A.Gopalakrishnan .. Petitioner/1st Respondent/
1st Respondent
Vs.
1.G.Kalaiselvi
2.Minor.G.K.Rubina .. Respondents/Petitioners/
Rep. By mother and Guardian Petitioners
G.Kalaiselvi.
3.The General Manager,
Bharat Heavy Electrical Limited,
Tiruchirappalli. .. 3rd Respondent/2nd Respondent/
2nd Respondent

PRAYER: Criminal Revision Case is filed under Section 397 read with Section 401 of the Code of Criminal Procedure, revise the order of the learned Chief Judicial Magistrate, Trichy in C.M.P.No.1085 of 2016 in C.M.P.No.322 of 2016 in M.C.No.85 of 2014 dated 12.01.2017.

For Petitioner : No Appearance

For Respondents 1&2 : Mr.S.Vanchinathan

ORDER

The revision petitioner is absent. The respondent counsel is present. This petition has been filed by the petitioner/husband to revise the order passed by the learned Chief Judicial Magistrate, Trichy in C.M.P.No.1085 of 2016 in C.M.P.No.322 of 2016 in M.C.No.85 of 2014 dated 12.01.2017.

2. To appreciate the revision petition, few facts are required. Therefore, they are stated below:

The revision petitioner got married to the first respondent on 17.07.2009. The second respondent minor G.K.Roobini was born to them through the wedlock. The revision petitioner is working as welder in Bharat Heavy Electrical Ltd., Trichy. The marriage was a love marriage and therefore, the family members of



the revision petitioner have distorted the mind of the revision petitioner to desert the first respondent and marry somebody else with heavy dowry. Also it is alleged in the maintenance petition that the revision petitioner is having illicit intimacy with some other lady. In the said circumstances, the revision petitioner has deserted her which has lead to filing of petition in M.C.No.85 of 2014 seeking maintenance of Rs.15,000/- for the first respondent and Rs.5,000/- for the minor second respondent. The learned Chief Judicial Magistrate, Trichy on 25.02.2015 has passed order fixing Rs.8,000/- for the first respondent and Rs.5,000/- to the second respondent as monthly maintenance. Since the revision petitioner has not paid the maintenance as awarded by the Court, the respondents herein had filed Crl.M.P.No.322 of 2016 for recovery of arrears for the period from 06.04.2015 to 08.02.2016 and filed C.M.P.No.1085 of 2016 to attachment the salary of the revision petitioner through his garnishee.

3. Considering the facts and circumstances of the case, the learned Chief Judicial Magistrate, Trichy, by order dated 12.01.2017 ordered attachment and allowed the petition for recovery of maintenance. The said order is impugned in the present revision petition. When the revision petition was taken up for consideration, the learned counsel for the petitioner represented that his client is ready to amicably settle the matter and sought indulgence of this Court to refer the matter to mediation and conciliation centre. Accordingly, the matter was sent for mediation. From the mediation centre this Court received report dated 17.07.2018 stating that no agreement reached between the parties. Therefore, this Court took up the matter for adjudication on merits. Once again, the learned counsel for the revision petitioner sought indulgence of this Court to refer the matter to mediation and assured that his client will see that the matter is settled amicably. Taking the submission of the learned counsel appearing for the revision petitioner, this Court referred the matter to mediation once again. However, the mediation centre has sent report dated 10.10.2018 that the petitioner is not willing to participate in the mediation.

4. In such circumstances, the matter is listed today for disposal on merits. The revision petitioner has conveniently abstained himself from appearance. His counsel is also absent. The contention raised in the petition is that the salary of the revision petitioner cannot be attached under Section 128 Cr.P.C. If at all the respondent aggrieved by non-payment of maintenance, she has recourse under Section 125(3) Cr.P.C. Therefore, it is contented in the revision petition that the learned Chief Judicial Magistrate ought not to have invoked Section 128 Cr.P.C. and issued warrant and attachment of future salary of the petitioner. It is also contended that the maintenance can be recovered only by following the procedure of recovering fine and procedure contemplated under Section 421 Cr.P.C. alone is to be followed and not attachment of salary through garnishee.



5. The submission made by the revision petitioner in his grounds of appeal is mis-conceived and totally contra to the spirit of the provision contemplated under Section 125 Cr.P.C. Hence this Court takes the pain to point out why the submission made by the revision petitioner is not only erroneous but also an attempt to subvert the law and defeat the true spirit of Section 125 Cr.P.C.

6. While Section 125 (1) Cr.P.C. mandates if husband/father/son fail to maintain his wife/minor children/parents, he is liable for prosecution and may be directed to maintain them, provided he have sufficient means, but wantonly neglects or refused to maintain them.

7. If Court orders any person, who falls under the category mentioned above after due consideration of the fact that he has sufficient means, but neglect to maintain or refused to maintain and inspite of such order, if he fails to comply the order, Sub Section 3 of Section 125 Cr.P.C. paves way to recover the maintenance. For easy understanding Section 125(3) Cr.P.C. extracted hereunder:

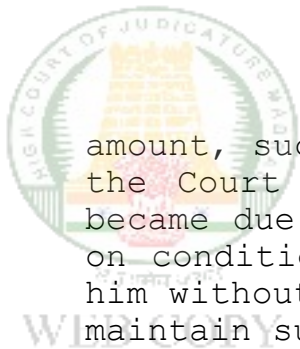
"125(3). Person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for whole, or any part of each month's allowance remaining unpaid after the execution of the warrant, 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:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation. If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to just ground for his wife's refusal to live with him."

8. From the reading of the Sub Section 3 of Section 125 Cr.P.C., and two provisos to this Sub Section, it is clear as crystal that before issuance of warrant for the recovery of the



amount, such warrant shall emanate only on the application made to the Court within a period of one year from the date, which it became due and also if the petitioner offers to maintain his wife on condition if she lives with him, but wife refuse to live with him without any ground for such refusal, then that person need not maintain such wife.

9. In this case, the facts does not reveal or indicate that the revision petitioner can deny or deprive payment of maintenance to his wife, for any of the reasons, which are contemplated under the provision to the Sub Section 3 of Section 125 Cr.P.C. Admittedly, there is breach of the order passed by the learned Magistrate in respect of maintenance awarded to the revision petitioner. So, the Court, which has passed order of maintenance has to take necessary steps for the execution of the order under Subsection 3 of 125 Cr.P.C. Law permits for execution of warrant for levying the amount due in the manner provided for recovery of fine and may sentenced such person in the whole or in part of "each months." Thus it is clear from the statute that the Magistrate either take steps to issue warrant for recovering the amount following the due procedure provided for levying fine or he may sentence such person, which shall be to the maximum of one month for each month default, but not exceeding 12 months.

10. In this case, the Magistrate has opted to attach the salary. Yet another provision under chapter IX of Cr.P.C. is Section 128. This provision empowers the Magistrate to enforce the order in any place, where the person against whom it is made.

11. The contention of the revision petitioner is that a wife, who is deprived of maintenance, despite the order passed by the learned Magistrate under Section 125 Cr.P.C. for remedy is to resort recovery of the same by invoking Section 421 Cr.P.C., alone. Reading of Section 421 Cr.P.C., we could see that the recovery of fine amount pursuant to levy of fine could be either by issuing the warrant for the levy of the amount by attachment or sale of any movable property belonging to the offender. The second option is to issue a warrant to the Collector of the District authorising him to realize the amount as arrears of land revenue from the movable or immovable property or both of the defaulter.

12. Thus, a combined reading of Section 125(3) Cr.P.C., Section 128 Cr.P.C. and Section 421 Cr.P.C., it is seen that the option left to the deserted and deprived wife is to resort for revenue recovery procedure through Collector of the District or left with option for seeking arrest of the person and remanding him to custody or she has option for seeking warrant by attachment or sale of any immovable property belonging to the offender. It is to be noted that the law says that recovery of maintenance arrears should emanated from the person, who is fortified with an order of maintenance. Once the application is filed, it is for the Court to decide how the money should be recovered.



13. When the statute clearly empowers the Court to attach the property of the offender for recovery of maintenance, the hair splitting argument submitted by the revision petitioner that Section 421 (a) Cr.P.C. is meant for attachment or sale of movable property and not for salary, if accepted, it will lead to miscarriage of justice and defeat the very spirit of Chapter IX of Cr.P.C. Therefore, this Court holds that whenever a person, who is ordered to pay maintenance and if he fails to comply the order, he can either;

- (1) arrested for non-compliance;
 - (2) his property both immovable and movable including salary can be attached ;
 - (3) the District Collector may be authorised to realise the amount as arrears of land revenue.
- Once the default in payment is brought to the notice of the Court by the petitioner, it is within the judicial discretion to opt any one of the option for recovery.

14. In this case, while settling the law as above, this Court records that as far as the facts of this case is concerned, the revision petitioner herein has deliberately failed to maintain his wife and child. Even after the order passed by the Magistrate to pay maintenance of Rs.8000/- to the first respondent and Rs.5000/- to the second respondent, he has not so far paid the maintenance in full. He has paid a sum of Rs.91,000/- that too pursuant to the order passed by this Court. It is not disputed that he is employed in BHEL and drawing salary of more than 40,000/- rupees per month. Therefore, when he is capable of maintaining his wife and child and his desertion is proved in the Court of law, this Court finds that there is no legal infirmity in the order passed by the learned Chief Judicial Magistrate, Trichy ordering the attachment of salary of the revision petitioner. To add further, as pointed earlier, it is open to the learned Judicial Magistrate, if in any case, the recovery of maintenance from the salary of the revision petitioner is impossible, the Court itself can take note of the fact that and resort to arrest of the revision petitioner by invoking Section 421 (a) Cr.P.C. r/w. 120(5)(3) Cr.P.C.

15. With these observation, this criminal revision petition is dismissed. Consequently, connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar (CRL SIDE)

// True Copy //



To

The Chief Judicial Magistrate,
Trichy.

WEB COPY

+1 CC To MR.S.VANCHINATHAN, Advocate SR. NO. 90502

**ORDER MADE IN
Cr1.R.C (MD) No.257 of 2018**

PJL

TR/RP/SAR-IV(09.11.2018) 6P 3C