

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**CRIMINAL WRIT PETITION NO. 156 OF 2018**

Emilio Carlos Antonio Jude Thadeus  
Costa Martins.

... Petitioner

Versus

Maria Do Carmo Ribeiro De Santana  
Costa Martins & 2 Ors.

... Respondents

**Coram:- C. V. BHADANG, J.**

**Date:- 5<sup>th</sup> April 2019**

P.C.

By this Petition, the petitioner is challenging the order dated 06.08.2018 below application exhibit 159 and exhibit 163 and an application dated 21.07.2018 filed by the respondent nos.1 and 2, in maintenance application No.5/2013/C. By the impugned order, the learned Magistrate has issued a warrant of attachment of the immoveable property of the petitioner, through Collector, North Goa, "to the extent of Rs.3,80,000/-" and to auction and sell the said property "to the extent of Rs.3,80,000/-".

2. The brief facts are that the respondent nos.1 and 2 have filed an application seeking maintenance against the petitioner under Section 125 of the Code of Criminal Procedure being maintenance application No.5/2013/C. By an order dated 13.01.2015, the learned Magistrate granted interim

maintenance of Rs.20,000/- per month, against the petitioner, payable to both the respondents. The respondents are trying to enforce the said order of interim maintenance.

3. It appears that on 01.11.2017, the learned Magistrate issued a distress warrant i.e. the warrant of attachment of movables belonging to the petitioner, for realisation of the arrears of maintenance of Rs.4,60,000/-. It transpired during the course of the arguments at bar that the said distress warrant could not be executed as yet and the police have not filed any report. The respondent in such circumstances, filed three applications i.e. at exhibit 110 and exhibit 67 and the one dated 21.07.2018 for issuing warrant of arrest against the petitioner for non-payment of interim maintenance, in which the Magistrate has now issued the warrant of attachment as aforesaid.

4. I have heard Mr. Desai, the learned Counsel for the Petitioner and Mr. Kantak, the learned Counsel for the respondent nos.1 and 2. Perused record.

5. Mr. Desai, the learned Counsel for the petitioner has submitted that the procedure for recovery of the maintenance is same as the recovery of fine under Section 421 Cr.P.C. and the said section does not contemplate issuance of warrant of attachment and sale of immovable property belonging to the defaulting party. Secondly, it is contended that the Magistrate

can only issue such warrant for recovery of arrears of maintenance to the extent of 12 months and not in excess thereof.

6. Mr. Kantak, the learned Counsel for the respondent nos.1 and 2 has submitted that Section 421(b) of Cr.P.C. authorises the Court to issue a warrant to the Collector of the District authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both of the defaulter. It is submitted that the impugned order in effect issues the warrant of attachment through the Collector and thus the impugned order is substantially in consonance with Section 421 of Cr.P.C.

7. I have carefully considered the circumstances and the submissions made. The procedure for recovery of the maintenance is provided in Section 125(3) of Cr.P.C., which reads thus :

"Section 125(3) – 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 expenses of proceeding, as the case may be,] remaining unpaid after the execution of the

warrant, to imprisonment for a term which may extend to one month or until payment is 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."

It can thus be seen that sub-section (3) of Section 125 of Cr.P.C. has to be read along with Section 421 of the Cr.P.C. which provides for a warrant for levy of fine. Section 421 of Cr.P.C. to the extent relevant reads thus :

"Section 421(1) - When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may -

- (a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;
- (b) issue a warrant to the Collector of the

district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter: Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 357."

8. A conjoint reading of both the Sections would make it explicit that if any person ordered to pay maintenance fails to pay the same without sufficient cause, the Magistrate may issue a warrant in the manner provided to levy the fine and may also sentence such person for either whole or part of each month's maintenance remaining unpaid, after the execution of the warrant, to imprisonment for a term extending to one month or until payment if sooner made.

9. In the present case, the record discloses that there was an order passed on 01.11.2017 issuing a warrant of attachment of movable property which the learned Counsel for the parties pointed out has not been executed as yet. Such a

situation cannot be countenanced. It is for the learned Magistrate to enforce the order dated 01.11.2017 and require the police to file a report about the execution of the same.

10. Coming to the impugned order dated 06.08.2018, it does appear that the Magistrate has issued a warrant of attachment of immovable property of the petitioner through the Collector, North Goa, and the order appears to be substantially in compliance with Section 421 of Cr.P.C. However, in order to obviate any technical difficulty, I find that the impugned order can be modified so as to be in consonance with Section 421 of Cr.P.C. The impugned order therefore shall read as under :

“Issue warrant to the Collector, North Goa, Panaji, for realising the amount of Rs.3,80,000/- as arrears of land revenue, from the movable and immovable properties or both of the respondent-Emilio Carlos Antonio Jude Thadeus Costa Martins. The warrant is made returnable on 17.06.2019.”

11. The petition is disposed off in the aforesaid terms.

**C. V. BHADANG, J.**

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