

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.04.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.586 of 2012
and M.P.No.1 of 2012

V.G.Ganesh Kumar

... Petitioner / Respondent

Vs.

K.Vijaya @ Vijayalakshmi

... Respondent / Petitioner

Prayer: Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. praying to set aside the order passed by the Judicial Magistrate, Polur dated 27.02.2012 made in Crl.M.P.No.396 of 2012.

For Petitioner : Mr.B.Jawahar

For Respondent : Mr.S.Vediappan

O R D E R

This Criminal Revision Case is directed against the order of attachment passed by the Judicial Magistrate, Polur for recovery of maintenance amount.

2. The case of the revision petitioner is that the Judicial Magistrate, Polur in M.C.No.3 of 2008, filed for maintenance by the wife/the respondent herein awarded Rs.1500/- as monthly maintenance from the date of filing of the petition. For recovery of the arrears, the respondent herein has preferred Crl.M.P.No.396 of 2012, wherein, attachment of salary was ordered. It is the contention of the revision petitioner that the said attachment order was passed without notice and therefore erroneous.

3. On perusal of the impugned order, this Court finds that the Judicial Magistrate has passed an order on 28.12.2011, fixing Rs.1500/- for monthly maintenance from the date of filing the petition. Record indicates that the maintenance case under Section 125 Cr.P.C., was filed in the year 2008. For recovery of arrears, the respondent has filed Crl.M.P.No.396 of 2012 on 27.02.2012 and on the same day, attachment was ordered.

4. The contention of the revision petitioner that an ex-parte order of attachment without notice, ordered by the Judicial Magistrate on the face of record is correct. But, there is no illegality or perversity in the order of the trial Court to interfere, since the order of the Magistrate fixing Rs.1500/- as monthly maintenance is a contested matter and after hearing both sides maintenance has been awarded vide order dated 28.12.2011, hence, to recover the arrears, Crl.M.P.No.396 of 2012 has been filed.

5. It is pertinent to point out that under Chapter IX of Crl.P.C., Section 125 provides for seeking maintenance and Section 128 provides of its enforceability. Any order of maintenance has to be recovered within a period of one year. Therefore, the application filed by the wife/respondent for recovery of arrears is perfectly in order and attachment without notice is not erroneous or illegal one and order was passed after contest. As far as the quantum of maintenance fixed, has been confirmed by the appellate Court as per the documents furnished.

6. Therefore, this Court finds no merit in this revision petition. Hence, the Criminal Revision Case is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpl

To

The Judicial Magistrate, Polur.

+1 cc to Mr.S.Vediappan, Advocate, S.R.No.33152

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SVI (CO)
SSM(28/05/2019)

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