

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.206 OF 2019

Maria Do Carmo Ribeiro De Santana Costa
Martins And Anr.

... Petitioners.

V/s.

Emilio Carlos Antonio Jude Thadeus Costa
Martins And Anr.

... Respondents.

Mr. Ajit R. Kantak and Mr. Raunak Ajit Kantak, Advocates for the
Petitioner.

Mr. Ryan Da Piedade Menezes, Advocate for the Respondent No. 1.

Mr. Gaurish Nagvenker, Additional Public Prosecutor for the
Respondent No.2.

Mr. Pavithran A. V., Advocate as Amicus Curiae.

Coram: NITIN W. SAMBRE, J.

Date: 15th April 2021

P.C.:

I have heard the respective Counsels for some time.

2. The order impugned is dated 19.08.2019 passed by the learned Judicial Magistrate First Class C-Court, Panaji whereby the directions are issued to the Collector of North Goa, calling report on the status of execution of warrant of attachment dated 20.05.2019, so as to enforce the payment of arrears of maintenance by

attachment and sale of movable properties under Section 125 Cr.P.C.

3. The learned Court of Magistrate on 01.11.2017 issued warrant of attachment against the respondent herein so as to attach the movable property and further directions to auction the same for recovery of the amount of maintenance. The said amount of maintenance was due and payable till September 2017.

4. Thereafter, the learned Court of Magistrate issued another order of attachment of 06.08.2018, which was modified by this Court in Criminal Writ Petition No.156 of 2018. The order dated 05.04.2019 passed by this Court reads thus:

“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.”

5. In the aforesaid background, the submission of learned Counsel for the petitioner is though the respondent has time and again assured to clear the maintenance either by disposing of his property or by depositing the amount of maintenance, till this date neither the amount of maintenance is paid/recovered nor there is an order of detention of the respondent is passed. According to him

day-by-day it is becoming difficult for the petitioner wife to survive on the empty assurances of the respondent husband of clearing entire arrears of maintenance.

6. With the assistance of respective learned Counsels, I have perused the order passed by this Court thereby giving sufficient opportunity to the respondent to pay maintenance. The Collector and the Police authorities were directed to take recourse to the attachment of movable and immovable property and to recover the amount of maintenance to be paid/receivable by the petitioner. It is unfortunate that executive authorities inspite of repeated judicial orders passed by this Court in this petition, in Criminal Writ Petition No.156 of 2018 and order of Magistrate, has, till date failed to attach the property of respondent and recover and pay the amount of maintenance to petitioner.

7. I am at pains to note that the Collector, North Goa has failed in his lawful duty in implementing the orders passed by this Court in Criminal Writ Petition No.156 of 2018 on 05.04.2019 so also the order of the Magistrate referred above.

8. The learned Amicus appointed by this Court has invited my attention to the judgment delivered by the Apex Court in the matter of ***Rajnish v/s. Neha & Anr.***¹, which in detail deals with the

¹ CRIA-73-2020

procedure to be adopted in the matter of the enforcement/execution of the orders of maintenance.

9. In the aforesaid background this Court considers it appropriate to issue following directions while disposing of the present petition.

10. The Magistrate who is dealing with the proceedings for recovery of maintenance initiated by the petitioner shall deal with the same expeditiously, if so required by taking up day-to-day hearing in the matter.

11. The Collector, North Goa/South Goa is directed to depute a responsible officer so as to execute the orders passed by the Magistrate and also by this Court in Criminal Writ Petition No.156 of 2018 to its logical end. Let report of progress in the matter be submitted to this Court every fortnight by the Collector.

12. The D.I.G., North Goa shall ensure the execution of the warrant by providing appropriate police assistance to Revenue authorities.

13. The learned Magistrate is required to be sensitive to the fact that the failure on the part of the respondent in honouring the orders for payment of maintenance should be viewed seriously and

default thereof will definitely warrant the consideration of the prayer of the petitioner for detention of the respondent in accordance with law. If such prayer is take out or is pending the same shall be dealt with forthwith in the light of the judgment of the Apex Court in the matter of ***Rajnesh*** cited supra.

14. It is directed that the Magistrate shall submit the report on the issue of the recovery of the maintenance, to be paid to the petitioner, after every four weeks before this Court in the present proceedings including that of the steps taken at the level of the Collector, North Goa/South Goa and that of the police authorities in the matter of execution of the warrants/attachment and sale of the property of the respondent.

The amount of maintenance if already paid be also taken into account.

15. The petition stands disposed of with above observations.

NITIN W. SAMBRE, J

msr.