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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2021

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Revision Case No.646 of 2021
and
Crl.M.P.No.10614 of 2021

S.Raja .. Petitioner/Respondent

Vs.

1. R.Dhanalakshmi

2. Block Educational Officer
Block Educational Office
Morappur- 635 305
Dharmapuri-District

...Respondents/Petitioners/
2nd Respondent

Prayer : Criminal Revision filed under Section 397 read with 401 of Criminal Procedure Code, praying to set aside the proceedings bearing Naka No.1230/Aah 1/2019 dated 31.08.2021 passed by the 2nd respondent.

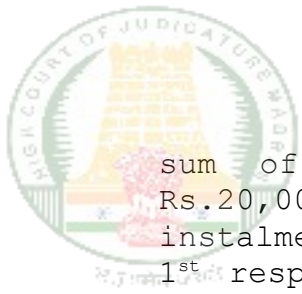
For Petitioner : Mr.N.Suresh

ORDER

(The case has been heard through video conference)

The Criminal Revision has been filed against the proceedings bearing Naka No.1230/Aah 1/2019 dated 31.08.2021 passed by the 2nd respondent.

2. The petitioner is husband, 1st respondent is wife and the 2nd respondent is the Block Educational Officer. The 1st respondent/wife had filed a maintenance case in F.C.M.C.No.36 of 2016 before the Family Court, Dharmapuri, against the petitioner/husband. The Family Court directed the petitioner/husband to pay a sum of Rs.10,000/- per month towards maintenance and a sum of Rs.30,000/- per year towards medical expenses to the 1st respondent/wife under Section 125 of Cr.P.C. As per the directions of the Family Court, the petitioner/husband paid a



sum of Rs.20,000/- as 1st instalment and another sum of Rs.20,000/- as 2nd instalment and a sum of Rs.10,000/- towards 3rd instalment and in total, he had paid a sum of Rs.50,000/- to the 1st respondent/wife. Thereafter, the petitioner/husband has not paid any amount and hence, the 1st respondent/wife filed a petition in Crl.M.P.No.24 of 2019 in F.C.M.C.No.36 of 2016 and the learned Family Court Judge, directed the petitioner/husband to pay the arrears amount of Rs.2,70,000/- from the date of filing of the said petition and the learned Judge, on 13.09.2019 ordered for attachment of salary for Rs.21,000/- per month. As per the order of the Family Court, a sum of Rs.21,000/- per month was recovered from the petitioner's salary from 04.12.2016 to 20.03.2021 in total, a sum of Rs.3,20,000/- was recovered and the same was paid to the 1st respondent/wife through Court. Thereafter on 12.08.2021, the 1st respondent/wife again filed another Crl.M.P.No.77 of 2021 in F.C.M.C.No.36 of 2016 praying for salary attachment for arrears of maintenance of Rs.4 lakhs.

3. The case of the petitioner/husband is that the first slot of salary attachment was completed only on 20.03.2021. As per Section 60(i) C.P.C., the 1st respondent/wife was entitled to file 2nd slot of salary attachment of the petitioner only after completion of 24 months whereas, the 1st respondent/wife, filed the Crl.M.P.No.77 of 2021 for 2nd slot of salary attachment as early as on 12.08.2021 itself i.e. before completion of the 24 months. The notice dated 15.08.2021 of the learned Judge Family Court, Dharmapuri, was served on the petitioner/ husband and the 2nd respondent indicating 01.09.2021 as the first hearing of the said Crl.M.P.No.77 of 2021 in F.C.M.C.No.36 of 2016 filed by the 1st respondent/wife. However, before the 1st hearing of the said petition, on 31.08.2021 itself, the 2nd respondent executed a proceedings in No.1230/Aah/ 1/2019 dated 31.08.2021 for salary attachment of Rs.12,903/- for 1st to 30th instalments and Rs.21,100/- as the last instalment, from September 2021 onwards. The petitioner/husband is working as a Secondary Grade Teacher at Morappur and getting net salary of Rs.42,642/- only. The monthly expenses of the petitioner/husband comes about Rs.54,975/- and therefore, the petitioner/husband cannot pay the monthly maintenance of Rs.10,000/- to the 1st respondent/wife as prayed in the said Crl.M.P.No.77 of 2021. Further he would submit that for 4 months the petitioner/husband fell ill and hence, he could not attend the school and he is facing loss of pay continuously for 4 months. Further, before completing the period of 24 months from the date of 1st attachment, the second attachment cannot be ordered. Even before passing of any order of



attachment by the Court, immediately on receipt of notice, the 2nd respondent passed the impugned order and attached the salary of the petitioner and remitted the same to the account of the 1st respondent/wife. Therefore, the order passed by the 2nd respondent dated 31.08.2021 is legally barred and the order passed by the 2nd respondent dated 31.08.2021 is liable to be set aside.

4. Heard the learned counsel for the petitioner/husband and the 2nd respondent.

5. Admittedly 1st respondent is wife and the petitioner is husband. The 1st respondent had filed F.C.M.C.No.36 of 2016 before the Family Court, Dharmapuri, and the Court also passed the order of maintenance. Admittedly the petitioner/husband paid a sum of Rs.50,000/- and thereafter, since he did not pay any amount to the 1st respondent, the Family Court, Dharmapuri, passed order of attachment, based on which, the salary of the petitioner/husband was attached and a sum of Rs.2,70,000/- was remitted to the first respondent through Court as arrears of maintenance. Subsequently, the Court also passed attachment of salary of Rs.21,000/- per month from the date of filing of the petition. Thereafter the 1st respondent filed CrI.M.P.No.77 of 2021, seeking order of attachment for the pending arrears of maintenance, in which, notice was ordered to the petitioner and the 2nd respondent. Since, the 2nd respondent is a Block Educational Officer and the petitioner is working as a Secondary Grade Teacher, the 2nd respondent passed the impugned order of attachment dated 31.08.2021. Now challenging the said order dated 31.08.2021 passed by the 2nd respondent, the present revision has been filed.

6. The learned Counsel for the petitioner/husband admitted that there are arrears of Rs.4 lakhs pending, but, the main contention of the Counsel for the petitioner is that already for the arrears amount of Rs.2,70,000/-, the Family Court had ordered attachment on earlier occasion following which, the salary of the petitioner was attached till 20.03.2021. As per Section 60(i) C.P.C., subsequent attachment can be made only after completion of 24 months and before completion of the cooling period, the 1st respondent filed another petition for attachment of salary for arrears which is against the provisions of law and therefore, the order passed by the 2nd respondent dated 31.08.2021 is liable to be set aside.



7. Admittedly the Family Court had ordered maintenance of Rs.10,000/- per month and Rs.30,000/- per year towards medical expenses. Thereafter, for arrears, the salary of the petitioner was attached from 04.12.2016 to 20.03.2021. However the petitioner did not pay the subsequent monthly maintenance. Therefore, the 1st respondent/wife moved another application before the Family Court and the Family Court issued notice to the petitioner/husband and the 2nd respondent and subsequently, the 2nd respondent passed the impugned order.

8. The bar under Section 60(i) C.P.C., regarding execution of Civil decree is not applicable to the maintenance amount ordered under Section 125(b) Cr.P.C. There is no bar for attachment of maintenance order passed under Section 125 Cr.P.C. Section 60(i) C.P.C. is applicable only for execution of decree passed by Civil Court. Therefore, the contention raised by the learned counsel for the petitioner/husband is not acceptable. As per Section 128 Cr.P.C., the order passed under Section 125 Cr.P.C. may be enforced by the Magistrate any time against whom it is made. Further, Section 60 C.P.C. would not be applicable to the order passed under section 125 Cr.P.C.

9. Further, the petitioner/husband himself has admitted that there are arrears pending for Rs.4 lakhs. The 1st respondent / wife cannot wait till another 24 months to get monthly maintenance. The scope of Section 125 Cr.P.C. itself is very clear that when the wife is unable to maintain herself, she is entitled for getting maintenance from the husband who has got means and neglects to maintain his wife.

10. Admittedly, the petitioner/husband is working as Secondary Grade Teacher. Though, he has stated that his expenses come around Rs.54,675/- and his salary is only Rs.42,642/-, no documentary evidence was produced to show the gross salary and expenses. However, the order of maintenance is only Rs.10,000/- per month as monthly maintenance. If the petitioner/husband had paid the said monthly maintenance from the day one of the filing of the petition, the arrears would not have accrued to that much and it is the fault on the part of the petitioner/husband. Since it is the maintenance amount ordered by the Family Court and the 1st respondent/wife has to survive with the maintenance, this Court finds that the contention raised by the Counsel for the



petitioner is not legally sustainable and there is no merit in the revision.

11. It is seen that even on an earlier occasion, the petitioner did not pay the amount of arrears and therefore, the order of attachment was passed. Thereafter, the 2nd respondent attached the salary of the petitioner and remitted the same in the account of the 1st respondent/wife which itself shows that the petitioner/husband is in the habit of forceful payment. Therefore, under these circumstances, this Court finds that the petitioner has not come to the Court with clean hands and in order to evade the payment of maintenance amount, he has filed the present revision before this Court.

12. Therefore, considering the above facts and circumstances of the case and since the matter is relating to maintenance and that the attachment is for recovery of arrears of maintenance, this Court is not inclined to entertain the revision as the petitioner/husband has no merit in the revision and the same is liable to be dismissed.

13. Accordingly, this Criminal Revision Case is dismissed at the admission state itself. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

dsn/ksa-2

To

1. The Block Educational Officer
Block Educational Office
Morappur- 635 305
Dharmapuri-District

Copy to:

1. The Judge, Family Court,
Dharmapuri.



2.The Section Officer,
Criminal Section,
High Court, Madras-104.

+2cc to Mr.N.Suresh, Advocate SR.No.54670

Criminal Revision Case No.646 of 2021

UM(CO)
CB(31/01/2022)