

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO.565/2021

Tushar Shalikram Bhagat
...Versus...
Sau. Ruplaxmi Tushar Bhagat

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri M.P. Kariya, Advocate for petitioner
Shri U.R. Phasate, Advocate for respondent

CORAM : AVINASH G. GHAROTE, J.
DATE : 07/04/2022

1. Heard Shri Kariya, learned Counsel for the petitioner and Shri Phasate, learned Counsel for the respondent.

2. The petition challenges the order dated 21/06/2021, passed by the learned Family Court No.2, Nagpur, whereby on account of arrears of maintenance by exercising the powers under Section 421 of Cr.PC., the Collector Amravati is requested to attach the undivided share of the petitioner, sell out the same and the proceeds of sale be sent to the Court by following the procedure under Section 421 of Cr.PC., and other provisions connected to it.

3. Shri Kariya, learned Counsel for the petitioner submits that the provisions of Section 421 of Cr.P.C., are not applicable in the instant matter and therefore, the impugned order suffers from a jurisdictional error. He submits that even presuming otherwise that Section 421 of Cr.P.C. is applicable, the learned Family Court could not have directed attachment of the immovable property and the undivided share of the petitioner therein, in light of the language of Section 421 (b) of Cr.P.C. He further submits that in case any order was to be passed under Section 421 of Cr. P.C., the same was restricted to the nature of the provision, as contemplated in Section 421 (b) of Cr.P.C., and not otherwise. In fairness, learned Counsel, on instructions, submits that the entire arrears, would be cleared by installments by December, 2022, for which duration, the petitioner will also pay the monthly maintenance, as awarded.

4. Shri Phasate, learned Counsel for the respondent opposes the application and contends that it was permissible for the learned Family Court to have directed the attachment of undivided share of the petitioner and to sell out the same as is contemplated by Section 421 of Cr.P.C., on account of the fact that there were arrears.

5. When a query was made by the Court as to what was the qualification of the respondent and any attempts

being made by her, to secure employment, the learned Counsel for the respondent is unable to point out any averment indicating this.

6. Without going into the issue as to whether Section 421 of Cr.P.C., was applicable, and presuming the same to be applicable, for the purpose of this petition, in my considered view, when clause (b) of Section 421 of Cr.P.C., speaks about issuance of warrant to the Collector authorising him to realise the amount as arrears of land revenue from the movable or immovable property or both of the defaulter, the learned Family Court, presuming the applicability of Section 421 of Cr.P.C., could have directed only that much and nothing more. That apart, any order under Section 421 (b) of Cr.P.C. would merely be in the nature of a warrant to the Collector to realise the amount as arrears of land revenue. How the arrears are to be recovered, is in the domain of the Collector and preferably such recovery, has to be ordered first out of the attachment of the movables and in case such recovery falls short, then only the question of touching the immovable property would arise. This position has been ignored by the learned Family Court in the impugned order, considering which, the same cannot be sustained and is hereby quashed and set aside.

7. The writ petition is accordingly allowed in the above terms. However, the statement made by Shri Kariya, learned Counsel for the petitioner, on instructions, that the entire arrears shall be cleared off by December, 2022 and so also the petitioner will be paying the monthly maintenance at the rate granted per month for the said duration, is accepted as a statement to the Court and the petitioner shall be bound by the same. There shall be no order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar