



Crl.RC.No.498 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Revision Case No.498 of 2022 &
Crl.M.P.No.5051 of 2022

Mohanraj

... Petitioner

Vs.

1.Vijayalakshmi

2.M.Abishek

3.M.Mugesh

... Respondents

Prayer: Criminal Revision filed under Section 397 read with 401 of Criminal Procedure Code, praying to set aside the order dated 11.12.2020 made in C.M.P.No.648 of 2019 in M.C.No.6 of 2013, on the file of the Judicial Magistrate Arakkonam.

For Petitioner : Mr.T.Saravanan

For Respondents : Mr.Suresh Sakthi Murugan



ORDER

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The Criminal Revision Petition has been filed by the petitioner/husband against the order of the trial Court granting attachment of the salary for maintenance. The petitioner is the husband and the respondents are the wife and his children.

2.The brief facts of the case is that the marriage between the couples took place on 22.11.1996. Out of the said wedlock, they were blessed with two sons viz., Minor Children. After the marriage they lived together for some time and thereafter, the petitioner/husband started quarreling with the Wife and in the year 2003, the petitioner/husband had deserted the respondents/wife and minor children. Thereafter, the respondents were living in her brother's house and subsequently, due to problem arose with her brother's family, he refused to give any help to her family. Despite several efforts taken by the the respondent/Wife for reunion, the husband did not co-operate. Since the Wife had to maintain herself and her minor sons and the husband is working as Store Keeper in Perambur Loco Works, Southern Railway, Ayanavaram and he is earning monthly salary of Rs.65,400/- and apart from that, the petitioner/husband has been owning



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house and lands at savoor village and all worth about a sum of Rs.25,00,000/-, the Wife sought for maintenance for herself and her minor Children by filing M.C.No.6 of 2013. In the maintenance case, an *exparte* order has been passed on 06.07.2015, by directing the petitioner/husband to pay the monthly maintenance of a sum of Rs.4,000/- each to the respondents/wife & children and the amount was effected from the date of filing of the maintenance, due to which the arrear amount was calculated to the tune of Rs.5,40,000/- and therefore, the petitioner/husband ought to pay the same to the respondents. But however, the petitioner did not come forward to comply with the said order, the respondents filed a petition under Section 128 Cr.P.C., for execution of the said order. The learned Judicial Magistrate, Arakkonam, by order dated 11.12.2020, attached the petitioner/husband's salary for maintenance. Aggrieved over the said order, the present Revision Petition has been preferred.

3. The learned counsel appearing for the petitioner would vehemently contend that the learned Judicial Magistrate without giving opportunity to the petitioner/husband has passed the order of attachment of his salary for maintenance and the learned Judicial Magistrate (under Criminal



jurisdiction) does not have power to issue such an order of attachment of salary. Further the learned counsel would contend that the petitioner/husband is getting gross salary of Rs.35,000/- per month and take home salary is Rs.18,608/- per month, if such being the fact, how could such a huge amount of Rs.5,40,000/- be deducted from the salary of the petitioner/husband and therefore, the order of the Court below is liable to be set aside.

4. The learned counsel appearing for the respondent/Wife filed a memo stating that from June 2021 to October 2022 a sum of Rs.4,29,339/- has been deducted from his salary and the same was credited to the account of the first respondent/Wife, but however, as on date a sum of Rs.2,74,661/- is due. Further, the learned counsel for the respondent/wife submitted that the petitioner/husband is working as a Store-keeper in the Southern Railways, Chennai and he is getting salary of more than Rs.70,000/-, but he has neither come forward to pay the maintenance amount nor complying with the order of the Court, the respondents/wife & children approached the



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Court by invoking under Section 128 Cr.P.C., and the Trial Court rightly ordered the attachment of the salary of the petitioner/husband and therefore, there is no merit in this revision and the same is liable to be dismissed.

5. Heard the learned counsel for the parties and perused the materials on record.

6. Normally in a revision, this Court will not interfere with the order of the Courts below, unless there is any perversity in the appreciation of evidence or any illegality or infirmity is found in the order of the Courts below. In this case, the relationship of the parties are not in dispute. The respondents/Wife & Children are residing separately and the same is also not in dispute. Though the Petitioner/Husband is a Central Government employee working as a Store Keeper in the Southern Railways, Chennai and he has sufficient means and he was getting salary more than Rs.70,000/- he has not come forward to pay the maintenance amount to his wife and children. Since as per Section 125 Cr.P.C., if the wife is unable to maintain herself and the husband despite sufficient source, neglects to maintain his



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wife, then she is entitled to get the maintenance.

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7. It is rightly pointed out by the learned counsel appearing for the respondents that as on date a sum of Rs.2,74,661/-, was due as huge arrears of maintenance amount. Therefore, it could be seen that the petitioner is dragging on the matter for avoiding to pay the maintenance amount to his wife and children, even though he has sufficient means and it is the bounden duty of the petitioner to comply with the order of Court, but however he has not come forward to comply with the order passed under Section 125 Cr.P.C., and hence, the learned Judicial Magistrate considered the facts and circumstances of the case and has rightly ordered the attachment of salary of the petitioner.

8. Therefore, this Court does not find any perversity in the order passed by the Judicial Magistrate and the Revision case filed by the Petitioner is dismissed by confirming the attachment order passed by the Court below.

In the result, the Revision Petition is dismissed. Consequently,



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connected Miscellaneous Petition is dismissed.

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Index : Yes/No

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To

Judicial Magistrate Arakkonam, Ranipet District.



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P.VELMURUGAN,J.

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