



BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

DATED: 28.02.2022

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C. (MD)No.95 of 2020

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Fareetha

... Petitioner

Vs.

1. S.Palanisamy

2. The Ordnance Factory,
Office Incharge,
AQA (A) DGAQA Ministry of Defence.
Ordnance Factory, Trichy - 16.

3. The Director General,
(South Zone) Office of the ADG,
(South Zone) DGAQA,
HAL Post, Bangalore - 560 017.

4. The Head Quarters,
Office Incharge,
DGAQA, H Block,
DHQ Post, New Delhi - 110 011.

... Respondents

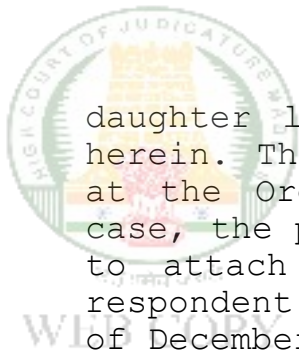
Prayer: This Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C. to call for the entire records relating to the impugned Order dated 16.12.2019 passed in Cr.M.P.No.2350/2019 in M.C.No.33 of 2019 on the file of the Chief Judicial Magistrate at Thiruchirappalli and set aside the same and allow the present Criminal Revision Petition.

For Petitioner	: Mr.D.Boopal
For R1	: Mr.S.Vinayak
For R2 to R4	: Mr.K.Prabhu
	Central Govt Standing Counsel

O R D E R

This Criminal Revision Petition has been filed, against the impugned Order dated 16.12.2019 passed in Cr.M.P.No.2350/2019 in M.C.No.33 of 2019 by the learned Chief Judicial Magistrate at Thiruchirappalli, thereby, dismissing the petition seeking attachment of Rs.15 lakhs, being the retirement benefit of the first respondent herein.

2.The petitioner got married to the first respondent on 05.11.2013. Due to the wedlock, one female child and one male child were born to them. Thereafter, they got separated due to their misunderstandings. However, the petitioner along with her son and



daughter living in the quarters allotted to the first respondent herein. The first respondent was working as a Charge Man(Grade I), at the Ordnance Factory, Trichy. While pending the maintenance case, the petitioner filed petition under Section 125(3) of Cr.P.C., to attach the retirement benefits to be received by the first respondent since the first respondent superannuation is in the month of December 2019.

3.It is relevant to extract the portion of Section 125(3) Cr.P.C.

"Section 125(3): If any person so Ordered fails without sufficient cause to comply with the Order, any such Magistrate may, for every breach of the Order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

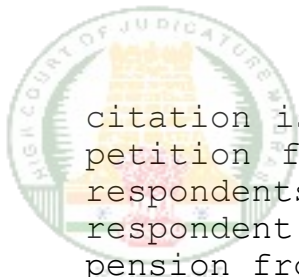
Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an Order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing."

From the above, the provision under Section 125(3)Cr.P.C., can be invoked only after the Order of maintenance and as such this petition is not maintainable at this stage. It can be invoked only after the Order of maintenance and thereafter if the husband failed to comply with the Order of maintenance.

4.That apart, the first respondent is looking after his son and daughter, during their college studies and in fact they are residing in the quarters allotted in favour of the first respondent. However, after the superannuation of the first respondent in the month of December 2019, they are living separately.

5.The learned counsel appearing for the petitioner relied upon the Judgment of this Court reported in **1998 Cr1.L.J (5) 3708**. In the said Judgment, this Court dealt with the case of attachment of salary after the Order of maintenance. Therefore, the above



citation is not applicable to the case on hand. Now because of this petition filed under section 125(3) Cr.P.C., the second and third respondents did not disburse the terminal benefits to the first respondent and the first respondent is also not receiving any pension from the respondents two and three herein.

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6. In view of the above, this Court finds no infirmity or illegality in the Order passed by the Court below. The second and third respondents are directed to disburse the terminal benefits to the first respondent forthwith and directed to pay monthly pension to the first respondent as per rules. The Court below is directed to dispose the maintenance case, within six months, from the date of receipt of a copy of this Order. While pending the maintenance case, the first respondent is directed to pay monthly maintenance of Rs.10,000/- (Rupees Ten Thousand only), including all educational expenses of the petitioner's son and daughter, after receipt of terminal benefits and monthly pension from the respondents two and three.

7. With the above directions, this Criminal Revision Petition is dismissed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PNM

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the Order may be utilized for official purposes, but, ensuring that the copy of the Order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Chief Judicial Magistrate,
Thiruchirappalli.

Copy to

The Registrar(Judicial),
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.PRABHU, Advocate (SR-9479[F] dated 02/03/2022)

+1 CC to M/s.D.BOOPAL, Advocate (SR-9546[F] dated 02/03/2022)

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