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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Reserved on : 20.01.2022
Pronounced on : 21.03.2020
CORAM

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). No.19063 of 2019

and

CRL.MP (MD)No.11185 of 2019

M.Bhaskaran : Petitioner/1 st Respondent/
Respondent

Vs.

1.The Chief Educational Officer,
O/o.The Chief Educational Officer,
Ramnad, Ramanathapuram District.

:1st Respondent/Garnishee/
Thirt Party

2.P.Pasupathi

3.B.Methashree

: Respondents 2&3/Petitioners/
Petitioners

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside the order dated 12.09.2019 passed in Crl.M.P.No.1508 of 2018 in M.C.No.8 of 2017 on the file of the learned Chief Judicial Magistrate Court, Thoothukudi.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For Respondents : Mr.R.Sivakumar,
Government Advocate (Criminal Side)
for R1.

: Mr.G.Thalaimutharasu, for R2.

O R D E R

The Criminal Original Petition is directed against the order passed in Crl.MP.No.1508 of 2018, in M.C.No.8 of 2017, dated 12.09.2019 on the file of the learned Chief Judicial Magistrate, Tuticorin, directing the attachment of salary.

2.Admittedly, the marriage between the petitioner and the second respondent was solemnized on 13.12.2009 and due to their wed-lock, the third respondent was born on 29.08.2011.



3.It is not in dispute that the respondents 2 and 3 have laid a maintenance claim in M.C.No.8 of 2017 and the learned Chief Judicial Magistrate, after conducting enquiry, has passed an order dated 30.05.2018, directing the petitioner herein to pay monthly maintenance of Rs.8,000/- each to the respondents 2 and 3.

4.It is also not in dispute that the petitioner aggrieved by the award of maintenance has preferred a revision in C.R.P.No.10 of 2019 and that the same is pending on the file of the District Court, Tuticorin. Meanwhile, the respondents 2 and 3 have filed a petition in Crl.M.P. No.1508 of 2018 under Section 128 of Cr.P.C, seeking orders, directing the first respondent Garnishee for attachment of Rs.35,000/- per month, as a part amount towards maintenance arrears from total salary of the petitioner from the office the Garnishee and deposit the amount before the Court and also for an order directing the Garnishee not to disburse the voluntary retirement and full and final settlement amount to the petitioner until realization of the pending maintenance amount of Rs.3,04,000/- to be paid by the petitioner.

5.The learned Magistrate has passed the impugned order dated 12.09.2019 ordering for attachment of 2/3 of the salary, after deducting a sum of Rs.1,000/-. Challenging the above said order, the petitioner, invoking Section 482 of Cr.P.C., has filed the present petition.

6.The learned counsel for the petitioner would submit that the learned Chief Judicial Magistrate ought to have considered that the Criminal Revision Petition filed by the petitioner is pending in C.R.P. No.10 of 2019 before the District Court, challenging the award of maintenance passed in M.C.No.8 of 2017 and that the learned Chief Judicial Magistrate ought not to have passed the impugned order of the salary attachment, when the criminal revision challenging the award of maintenance is pending before the higher forum.

7.No doubt, as already pointed out, the petitioner has preferred the revision challenging the order passed in M.C.No.8 of 2017 and that the same is pending before the District Court.

8.It is not the case of the petitioner that the District Court has granted stay for execution of the order passed in M.C.No.8 of 2017. As rightly contended by the learned counsel for the respondent, mere pendency of revision cannot be considered as barring or preventing from passing orders executing the maintenance award. In the absence of any order staying the execution of the award of maintenance, proceeding of the petition filed under Section 128 Cr.P.C by the learned Magistrate cannot be found fault with.



9.The next contention of the petitioner is that the learned Chief Judicial Magistrate while passing the order for salary attachment, has not assigned any reason.

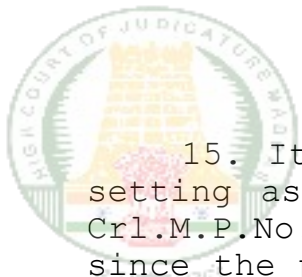
10.The learned counsel for the petitioner would submit that the learned Magistrate ought to have directed the petitioner to deposit the amount in pursuance of the order passed in the maintenance case and only in the absence of making deposit, he ought to have ordered for salary attachment.

11.He would further submit that the learned Chief Judicial Magistrate has not followed the procedures contemplated for attaching the salary of the petitioner and more particularly, the procedure contemplated under Order 21 Rule 48 of CPC.

12.As rightly contended by the learned counsel for the respondents 2 and 3, since the above Crl.M.P.No.1508 of 2018 has been filed under Section 128 Cr.P.C, the question of invoking Order 21 Rule 48 CPC or any other provisions of the Code of Civil Procedure does not arise at all.

13.The learned counsel for the petitioner would submit that the learned Chief Judicial Magistrate has passed an order on 03.08.2019 stating that Crl.M.P.No.2105 of 2018 relating to the execution of maintenance order was pending and the case was adjourned to 07.08.2019, that subsequently when the case was called on 07.08.2019, it has been stated by the learned Chief Judicial Magistrate that Crl.M.P.No.2105 of 2018 was allowed on 03.08.2019 but no order was passed in Crl.M.P.No.2105 of 2018 on 03.08.2019, that the learned Magistrate has proceeded the case as if the above Crl.M.P.No.2105 of 2018 was allowed on 03.08.2019, and that therefore, the very order of the attachment was only on the presumption that Crl.M.P.No.2105 of 2018 was allowed on 03.08.2019. After hearing the above arguments, this Court has directed the Registry to call for the records relating to the petition in Crl.M.P.No.2105 of 2018 and Crl.M.P.No.1508 of 2018 and perused the copies of the records received by the concerned Court.

14.It is evident from the records that the petitioner has filed a petition under Section 126(2) Cr.P.C in Crl.M.P.No.2105 of 2018 for setting aside the ex-parte order passed in Crl.M.P.No.1508 of 2018 dated 25.10.2018 and that the learned Chief Judicial Magistrate after hearing the both parties and considering the submissions of the counsel for the respondents 2 and 3 that they were not having any objections in allowing the petition on payment of cost, has passed conditional order on 26.07.2019, directing the petitioner to pay the cost of Rs.400/- on or before 02.08.2019 , failing which, the petition shall stand dismissed and that subsequently, the petitioner side has filed a memo stating that the cost has been paid and after recording the same, the petition in Crl.M.P.No.2105 of 2018 is to be allowed.



15. It is pertinent to note that the learned Magistrate, after setting aside the ex-parte order passed against the petitioner in CrI.M.P.No.1508 of 2018, posted the matter for payment and that since the petitioner has not chosen to pay the amount, the impugned order was passed attaching 2/3 of salary, after deducting Rs.1,000/-.

16. Considering the above, the contention of the petitioner that the learned Chief Judicial Magistrate has not given any opportunity to make payment is proved to be false.

17. Now coming to the main contention of the petitioner regarding the validity and legality of the order of attachment of salary for recovery of award of the maintenance, it is necessary to refer the decisions of this Court in **Mani Vs. Jaykumari** reported in **1998 (2) LW CrI. 498** :

"64. In the instant case, as narrated earlier, the wife was driven from pillar to post for making several applications before the executing Court to collect the arrears of maintenance amount. When those efforts proved to be futile, the learned Magistrate deemed it fit to pass such an order directing for the attachment of salary for the future maintenance as well."

18. It is also necessary to refer the judgment of this Court in **A.Gopalakrishnan, Vs. G.Kalaiselvi and others** in CrI.R.C(MD)No.257 of 2018, dated 12.10.2018 and the relevant passages are extracted hereunder :

"13. When the statute clearly empowers the Court to attach the property of the offender for recovery of maintenance, the hair splitting argument submitted by the revision petitioner that Section 421 (a) Cr.P.C. is meant for attachment or sale of movable property and not for salary, if accepted, it will lead to miscarriage of justice and defeat the very spirit of Chapter IX of Cr.P.C. Therefore, this Court holds that whenever a person, who is ordered to pay maintenance and if he fails to comply the order, he can either;

(1) arrested for non-compliance; (2) his property both immovable and movable including salary can be attached ;

(3) the District Collector may be authorised to realise the amount as arrears of land revenue.

Once the default in payment is brought to the notice of the Court by the petitioner, it is within the judicial discretion to opt any one of the option for recovery.

14. In this case, while settling the law as above,

<https://hcservices.courts.gov.in/userrecords> that as far as the facts of this case is



concerned, the revision petitioner herein has deliberately failed to maintain his wife and child. Even after the order passed by the Magistrate to pay maintenance of Rs.8000/- to the first respondent and Rs.5000/- to the second respondent, he has not so far paid the maintenance in full. He has paid a sum of Rs.91,000/- that too pursuant to the order passed by this Court. It is not disputed that he is employed in BHEL and drawing salary of more than 40,000/- rupees per month. Therefore, when he is capable of maintaining his wife and child and his desertion is proved in the Court of law, this Court finds that there is no legal infirmity in the order passed by the learned Chief Judicial Magistrate, Trichy ordering the attachment of salary of the revision petitioner. To add further, as pointed earlier, it is open to the learned Judicial Magistrate, if in any case, the recovery of maintenance from the salary of the revision petitioner is impossible, the Court itself can take note of the fact that and resort to arrest of the revision petitioner by invoking Section 421 (a) Cr.P.C. r/w. 120(5) (3) Cr.P.C."

19.This Court has specifically held that when a person, who is ordered to pay maintenance, fails to comply with the order, he can either be arrested for non compliance or his properties both movable and immovable including salary can be attached.

20.Considering the above and on applying the legal dictum above referred, this Court has no hesitation to hold that the impugned order for attachment of salary is very much valid and legal and as such, the same cannot be found fault with. Hence, this Court concludes that the above petition, which is devoid of merits, is liable to be dismissed. Since the revision is pending from 2019 onwards, this Court is of the view that necessary directions is to be issued for early disposal of the same.

21.In the result, the Criminal Original Petition is dismissed and the learned District Judge, Tuticorin, is directed to dispose the revision in C.R.P.No.10 of 2019 as expeditiously as possible preferably within a period of one month from the date of receipt of copy of this order. Consequently, connected Miscellaneous petition is closed.

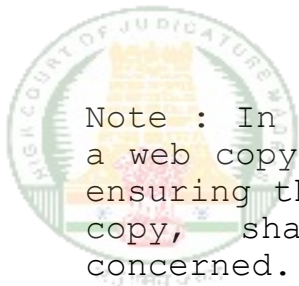
Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



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.

WEB COPY

To

- 1.The District Judge, Tuticorin.
- 2.The Chief Judicial Magistrate Court,
Thoothukudi.
- 3.The Chief Educational Officer,
O/o.The Chief Educational Officer,
Ramnad, Ramanathapuram District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-13362[F] dated 22/03/2022)

+1 CC to M/s.G.THALAIMUTHARASU, Advocate (SR-13821[F] dated 23/03/2022)

CRL OP(MD). No.19063 of 2019
and

CRL.MP(MD)No.11185 of 2019
Date : 31/03/2022

RK(12/04/2022) 6P 7C