



Crl.O.P(MD).No.4757 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 14.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.4757 of 2020

S.Ilayaraja

...Petitioner

Vs

1.Nandhini Devi

2.Minor I.Aadharashini

Rep. by his Mother/Natural Guardian

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to set aside the impugned attachment order passed by the Family Court, Tiruchirappalli in Crl.M.P.No.173 of 2014 dated 20.01.2020.

For Petitioner

: Mr.M.Ramu

For Respondents

: Mr.R.S.Sivaram

ORDER

This petition is filed to quash the attachment order passed in Crl.M.P.No. 173 of 2014 dated 20.01.2020 on the file of the Family Court, Tiruchirappalli.

2.According to the petitioner, the respondents filed maintenance case as against the petitioner and the trial Court awarded a sum of Rs.2,000/- each to the respondents. The allegations made by the first respondent are that due to



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the harassment made by the petitioner, the first respondent left the matrimonial home and residing with her parents. Thereafter, the first respondent filed an application under Section 125 of Cr.P.C., before the learned Chief Judicial Magistrate, Trichy. Thereafter the trial Court has passed an order to pay maintenance of Rs.2,000/- to each respondents through an order dated 07.11.2012. Against which, the petitioner preferred a criminal revision in Criminal Revision No.11 of 2013 before the I Additional District Judge, Tiruchirappalli and the said order was confirmed by the appellate Court through order dated 07.08.2013. The petitioner has not challenged the said order. Now the Family Court, Tiruchirappalli in Cr.M.P.No.173 of 2014 passed attachment order by attaching the salary of the petitioner. Thereby, he filed this petition on the grounds that the procedures have not been followed and the trial Court without issuing notice passed attachment order to attach the salary of the petitioner. Already the first respondent filed divorce petition in H.M.O.P.No.921 of 2014 before the Family Court, Tiruchirappalli and the marriage was dissolved on 19.05.2015. Thereby the impugned order for attachment is liable to be quashed.

3.No counter was filed by the respondents.

4.The learned counsel appearing for the petitioner has argued that the



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first respondent has filed petition under Section 125 of Cr.P.C., in M.C.No.111 of 2010 and the trial Court has passed order to pay maintenance of Rs.2,000/- each to the respondents and same was challenged through revision in Criminal Revision No.11 of 2013 before the I Additional District Judge (PCR), Tiruchirappalli. The District Court also dismissed the revision by confirming the order of learned Chief Judicial Magistrate through order dated 07.08.2013. Thereafter, the respondents have filed Cr.M.P.No.173 of 2014 on the file of the Family Court in M.C.No.111 of 2010 to attach the salary of the petitioner. Without following the procedure, the trial Court has passed the attachment order. Hence, the attachment order is liable to be set aside.

5.The learned counsel appearing for the respondents has argued that already the trial Court has awarded maintenance to pay a sum of Rs.2,000/- to each of the respondents per month. In order to execute the order, the respondents have filed Cr.M.P.No.173 of 2014 before the Family Court, Tiruchirappalli and the trial Court has passed the order to attach the salary due to failure on the part of the petitioner since the petitioner has not paid the award amount. The trial Court has passed attachment order by following the procedures. There is no necessity to interfere in the order passed by the trial Court and this petition is liable to be dismissed.



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6.To support of his contention, he relied upon the following judgments:-

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(I)Mani v. Jayakumari reported in 1998 Crl. J 3708.

(ii)S.Raja v. R.Dhanalakshmi and another in Crl.R.C.No.646 of 2021.

(iii)M.Bhaskaran v. The Chief Educational Officer and others in Crl.O.P.(MD)No.19063 of 2019.

7.Heard both sides and perused the materials available on records.

8.On perusal of the records, it is observed that in this case, there is no contravention with regard to the relationship of the parties and there is no dispute about the quantum of the maintenance amount awarded by the trial Court. The only contention of the petitioner is that the first respondent already filed divorce petition in H.M.O.P.No.921 of 2014 and the same was allowed and thereafter, without following the procedures, the trial Court has attached the salary of the petitioner. The trial Court has to recover the maintenance amount through revenue recovery proceedings but not by attachment of the salary of the petitioner.

9.Per contra the contention of the respondents is that the respondents have filed a petition before the trial Court due to the failure on the part of the petitioner to pay the maintenance amount. She filed a petition to attach the



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salary of the petitioner and the same was ordered. There is no illegality in passing order of attachment by the trial Court.

10.The learned counsel appearing for the respondents relied upon the judgment of *Mani v. Jayakumari* reported in **1998 Crl. J 3708**, wherein this Court in para nos.67 to 71 held as follows:-

“67. Mr. A. Packiaraj, Amicus Curiae appointed by this Court, requests this Court to look into the matter from yet another angle. According to him, the impugned order issuing warrants of attachment of salary for future maintenance would be well within the power as per Sections 128 and 431, Cr.P.C. It is submitted that the reading of the relevant sections under Chapter IX, Cr.P.C. would give a clue that the Court, can straightway pass an order of enforcing the future maintenance as well even without resorting to Sections 125(3) and 421, Cr.P.C.

68. Section 125(1) and (3), Cr.P.C. deals with the award as well as the procedure contemplated for collection of past maintenance in default. But. Section 128, Cr.P.C. deals with enforcement of the order of maintenance in general term.

69. In this context, it is pertinent to note that Section 431, Cr.P.C. which makes it clear that warrant can be issued by the Court as in the case of levy of fine, for recovery of any money payable by virtue of any order made under this Code.

70. Though Sections 125(3) and 421(a) contemplate about orders in default, Section 431, Cr.P.C. does not visualise any



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such situation. Under this section, if the amount has to be payable, the learned Magistrate may as well be justified to pass order directing to issue warrant of attachment under the abovesaid section.

71. As indicated earlier, [Section 125\(3\)](#) of Cr.P.C. relates to the power of the Magistrate for enforcement of the order for every breach of the same. [Section 128, Cr.P.C.](#) which does not contemplate any such breach, reads thus :

128. Enforcement of order of maintenance : A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due.”

11. On careful perusal of the judgments, it is clear that the trial Court can attach the salary of the respondents for the pending maintenance amount.

12. The learned counsel appearing for the respondents relied upon the judgment of ***S.Raja v. R.Dhanalakshmi*** reported in ***Crl.R.C.No.646 of 2021***, wherein this Court in para nos.11 and 12 held as follows:-

“11. It is seen that even on an earlier occasion, the



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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.The learned counsel appearing for the respondents relied upon the judgment of ***M.Bhaskaran v. The Chief Educational Officer and others*** reported in ***Crl.O.P.(MD)No.19063 of 2019***, wherein this Court in para nos.19 to 20 held as follows:-

“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



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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.”

14. On careful reading of the above said judgment, it is clear that the failure on the part of the husband to pay the maintenance amount, the same can be recovered by way of attachment of salary. In this case also the trial Court issued attachment order to attach the salary of the petitioner.

15. Hence, there is no any illegality by ordering attachment of the salary. There is no infirmity found in the order of the trial Court and hence, this Court has no warrant to interfere with the order passed by the trial Court. In the result, this Criminal Original Petition is dismissed.

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NCC : Yes/No
Internet : Yes/No
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To

1.The Judge, Family Court, Tiruchirappalli.



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P. DHANABAL,J.

Mrn

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