

CRM-M-34133-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34133-2023
Date of decision:20.05.2024

RAHUL KUMAR @ RAHUL KAGRA . . . PETITIONER

V/s

JYOTI BALA AND ANR.

. . . RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Priyanshu Kamra, Advocate for the petitioner.

Mr. Piyush Setia, Advocate for the respondent.

SUMEET GOEL, J.

1. Present petition has been filed under Section 482 of the Code of Criminal Procedure against the order dated 04.02.2023 passed by learned Principal Judge (Family Court), Faridkot vide which the learned Family Court has ordered for attachment of an amount of Rs.5,12,000/-, on account of payment due by the petitioner, towards arrears of maintenance to respondents.

2. Facts germane to the adjudication of the present petition are that the marriage of petitioner was performed with respondent No.1 on 29.04.2017. Out of the wedlock of petitioner and respondent No.1, a girl child (respondent No.2) was born. However, various disputes started arising between the parties. Resultantly, the

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respondent No.1 lodged an FIR bearing No.193 dated 30.11.2018 under section 498-A, 406, IPC. The petitioner has filed a divorce petition against the respondent No.1, which is stated to have been allowed by the learned Family Court, Faridkot on 09.03.2023. Respondents i.e. wife and minor daughter of the petitioner, filed an application under Section 125 of the Code of Criminal Procedure, seeking maintenance, against the petitioner. The said application bearing No.02/03.01.2019 was allowed on 14.11.2022. The petitioner was directed, by the learned Family Court, Faridkot, to pay an amount of Rs.6000/- to respondent No.1; and an amount of Rs.5,000/- to respondent No.2; per month as maintenance. Besides that the learned Family Court also fastened the liability on the petitioner to pay the arrears of interim maintenance due, in furtherance of order dated 14.11.2019 passed by it.

3. The respondents filed an execution petition bearing CRM-20-2023, before the learned Family Court, seeking realization of the maintenance awarded to them under Section 125 Cr.P.C. In the said execution petition it was contended on behalf of the respondents, that the petitioner is in arrears of Rs.5,12,000/-, towards maintenance, for the period from 03.01.2019 to 02.11.2022. The learned executing Court was apprised that the petitioner would be receiving Rs.20,00,000/- out of the retirement dues of his mother, being her only legal heir. In pursuance to the same the learned Principal Judge (Family Court), Faridkot, vide order dated

04.02.2023, ordered for attachment of Rs.5,12,000/- out of the said amount to be received by the petitioner.

4. Feeling aggrieved of the above order dated 04.02.2023 passed by the learned Family Court Faridkot, the petitioner sought to challenge the same with the averments that the respondent No.1 has been granted maintenance despite her being BCA graduate and MCA post graduate. The petitioner has been granted decree of divorce by the learned Family Court. The petitioner was unemployed till the end of year 2022 and thereafter, he got employed with Municipal Corporation Abohar, but has not yet received any salary.

5. All the above mentioned pleas of the petitioner, simply made qua the entitlement of respondent to seek maintenance, pales into insignificance for the reason that, the order dated 14.11.2022 passed by the learned Family Court, granting maintenance to the respondents is not subject matter of adjudication of present proceedings. The merits of order dated 14.11.2022 in the absence of challenge to the same, cannot be gone into by this Court. The order dated 14.11.2022 having been passed by the Court of competent jurisdiction is to be complied with by the petitioner.

6. However, in the present petition the petitioner has challenged the order dated 04.02.2023 passed by the learned Family Court in execution case, with the averments that the impugned order dated 04.02.2023 is illegal, in as much as it has ordered for the attachment of retirement dues of his mother. It is argued on behalf of the petitioner that retiral benefits of a person cannot be attached in the

execution of any decree. To buttress his argument reliance has been placed on the judgment passed by Hon'ble Supreme Court in, Civil Appeal Nos.6440-41 of 2008 Special Leave Petition (C) Nos.797-798 of 2006 titled as ***Radhey Shyam Gupta vs. Punjab National Bank & Anr.*** decided on 04.11.2008. Further, reliance has been placed by the petitioner on a judgment passed by Hon'ble Telangana High Court in writ petition No.1034 of 2021 titled as ***N.R. Indira Vs. The State of Telangana and Anr.***

7. The above arguments on behalf of the petitioner though appear fanciful at first flush, but do not hold the ground when analyzed deeply. The reliance placed by the petitioner on the judgments of Hon'ble Supreme Court and Hon'ble Telangana High Court is wholly adventurous and misconceived.

8. In both the above quoted judgments relied upon by the petitioner the issue involved was the attachment of pension and gratuity of a retired employee for satisfaction of a decree of Civil Court. Whereas, in the present case the execution petition has been filed by the respondents seeking redress to recover the amount of maintenance granted under the provisions of Section 125 Cr.P.C. Further, the amount attached by the learned Family Court in execution proceedings, is not the retiral dues of the petitioner. The petitioner, by astuteness in pleadings, has portrayed that the sum attached, being retiral dues of his mother are not amenable to attachment. There is no quarrel with the broad legal proposition that the retiral dues of a person are not amenable to attachment in

execution of recovery of an amount from him. However, delving deeper into the facts of the case makes it clear that the amount which is termed as retiral benefits of mother of the petitioner, immune from attachment in execution are not retiral benefits simpliciter.

9. Perusal of order dated 04.02.2023 passed by the learned Family Court Faridkot, shows that the mother of the petitioner has since deceased, the petitioner would be receiving her service dues being her legal heir. The said amount coming to the hands of petitioner, by virtue of succession to the estate of his deceased mother, cannot by any stretch of imagination be termed as retiral dues or service benefits of the mother of the petitioner. The said amount coming to the petitioner as tangible corporeal property is certainly amenable to attachment. The factum of receiving of said amount by the petitioner in succession from his deceased mother is not at all disputed in the present proceedings. Rather, it is clearly admitted aspect of the case on behalf of the petitioner. In para 9 of the present petition filed by the petitioner under Section 482 of Cr.P.C., petitioner has clearly admitted that he is going to receive one third of the amount of service dues of his mother, which are pleaded as Rs.20,00,000/- in the execution petition. Para 9 of the present petition as pleaded by the petitioner is reproduced herein for ready reference.

“9. That further it is pertinent to submit that the respondent wife has falsely deposed that the petitioner is sole legal heir of the estate of the mother, as the father and sister of the

petitioner are also the legal heirs of the estate of the petitioner's deceased mother but the learned executing Court without any sort of evidence to examine the factual positions have passed the impugned order which is liable to be set aside."

10. The entitlement of petitioner to hold that said amount in succession of his mother, relates back to his mother's death, the golden rule of succession being that it never remains in abeyance. As such the amount of Rs.20,00,000/- as service dues of the deceased mother of the petitioner, can conclusively be termed as movable property of the petitioner.

11. The amount of service dues of the deceased mother of the petitioner having been pleaded as Rs.20,00,000/-, the petitioner as per his own showing in the above quoted para of his pleadings, is certainly entitled to accumulate an amount of Rs.6,66,666/- approximately. The amount of Rs.5,12,000/- attached by the learned Family Court, as such, cannot be considered more than the share of the petitioner in said amount, as per his own showing.

12. The power of the learned Family Court to attach the amount stem out of the provisions of Section 125(3) and Section 421 of the Cr.P.C. Both the provisions of the Code of Criminal Procedure Code are reproduced herein below:

"125 xxx

(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:"

"421. Warrant for levy of fine :- (1) When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may -

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender :"

13. Careful reading of the above mentioned provisions of the Code of Criminal Procedure makes it clear that arrears of maintenance is thus recoverable in the same manner provided for recovery of fines levied in a criminal case. Fine levied is recovered according to Section 421 (1) (a) of the Code. Section 421 (1) (a) vests the Court with power to issue a warrant for the levy of the amount by attachment of any moveable property.

14. The word 'movable property' has not been defined in the Code of Criminal Procedure. However, Section 22 of the Indian Penal Code defines the same as under:

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“22. ”Movable Property”.- The words “movable property” are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which attached to the earth.”

15. The above-mentioned definition of word movable property as enshrined in the Indian Penal Code can be read in the Code of Criminal Procedure with aid of Section 2(y) of the Code of Criminal Procedure.

16. As such the amount attached being tangible corporeal property in the nature of moveable property as enshrined in Section 421 of the Cr.P.C., in the hands of the petitioner, no fault can be attributed to the attachment thereof by the learned Family Court in execution of recovery of arrears of maintenance payable by him.

17. In view of my foregoing findings the present petition filed by the petitioner under Section 482 of the Code of Criminal Procedure, being devoid of any merit, is dismissed. As a natural corollary thereof, the order dated 04.02.2023, passed by learned Principal Judge (Family Court), Faridkot, is upheld.

(SUMEET GOEL)
JUDGE

May 20, 2024
jatin

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No