



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR(F)-934-2019(O&M)

Reserved on: 11.12.2024

Pronounced on: 16.12.2024

Dharminder Singh

...Petitioner

Versus

Jasvir Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Madan Lal Saini, Advocate
for the petitioner.

None for the respondent.

HARPREET SINGH BRAR, J.

1. The present revision petition has been preferred against impugned orders dated (i) 04.06.2019 whereby salary of the petitioner to the extent of Rs. 4,10,000/- till date of realisation of arrears of maintenance was ordered to be attached, (ii) 23.10.2019 whereby show cause notice was issued to the superior officer of the petitioner, namely, Captain M. Manjunath for dereliction in complying with order dated 04.06.2019, and (iii) 02.11.2019 whereby Col. Bhupinder Singh, Commanding Officer, 270 Engineer Regiment was asked to take appropriate action against Captain M. Manjunath towards non compliance with the aforementioned orders, passed by the learned Principal Judge, Family Court, Panchkula in execution proceedings initiate under Section 125 of Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.').

2. Briefly, the facts are that the marriage between the petitioner and

**CRR(F)-934-2019(O&M)****2**

the respondent was solemnized on 04.12.2011 in accordance with Sikh rites and rituals. No child was born out of this wedlock. However, matrimonial dispute ensued and the respondent filed a petition for maintenance under Section 125 Cr.P.C. Consequently, an amount of Rs. 10,000/- per month was granted to her as maintenance. In order to realise the arrears due towards the respondent, she filed an execution application. In furtherance of the same, 1/3rd of the salary of the petitioner was attached vide order dated 04.06.2019. Subsequently, the respondent also filed for divorce and the same was also granted *ex parte* vide order dated 14.01.2019 by the concerned Court at Rupnagar.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner is a Naik with the Indian Army and was not granted leave to participate in the proceedings initiated under Section 125 Cr.P.C. In fact, the counsel engaged by him also failed to appear before the concerned Court and the matter was decided *ex parte*. Thereafter, when the respondent filed for execution, 1/3rd of the salary of the petitioner was erroneously attached towards realisation of arrears. Vide letter dated 31.07.2019, the competent Army authority apprised the learned Court below that the salary of an Army personnel is immune from attachment by virtue of the Army Act, 1950. Additionally, instructions issued by the Ministry of Home Affairs, vide letter no. 50/51 Judicial dated 07.01.1954, was also placed on record. The learned Court below has failed to appreciate the same and has fallen into grave error by passing strict orders (dated 23.10.2019 and 02.11.2019) directing departmental action to be initiated against the superior officers of the petitioner for their failure to attach salary of the petitioner. The impugned



CRR(F)-934-2019(O&M)

3

orders are also contrary to the High Court Rules and Orders (Vol. 1, Chapter 6

A) which categorically provides immunity from attachment of salary in satisfaction of any decree or order enforceable against him.

4. Having heard learned counsel for the petitioner and after perusing the record with his able assistance, it appears that the following question arises for adjudication:

“Can the salary of Army personnel be attached towards clearance of arrears of maintenance granted under Section 125 of the Cr.P.C. (now Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023?”

5. Proper adjudication of the matter at hand would require a study of the relevant provisions of the Army Act, 1950, which are:

“Section 25. Authorised deductions only to be made from pay:

The pay of every person subject to this Act due to him as such under any regulation for the time being in force shall be paid without any deduction other than the deductions authorised by or under this or any other Act.

Section 28. Immunity from attachment:

Neither the arms, clothes, equipment, accoutrements or necessities of any person subject to this Act, nor any animal used by him for the discharge of his duty, shall be seized, nor shall the pay and allowances of any such person or any part thereof be attached, by direction of any civil or revenue court or any revenue officer in satisfaction of any decree or order enforceable against him.

Section 33. Saving of rights and privileges under other laws:

The rights and privileges specified in the preceding sections of this Chapter shall be in addition to, and not in derogation of, any other rights and privileges conferred on persons subject to this Act or on members of the regular Army, Navy and Air Force generally by any other law for the time being in force.

Section 91. Deductions from pay and allowances of persons other than officers.

$$xxx$$

(i) any sum required by order of the Central Government or any prescribed officer to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child.”

It must be noted that Section 91(i) is similar to Section 90(i) of the Army Act. Note 22 to Section 90(i) of the Army Act, as contained in the Manual of Military Law, Volume- II (hereinafter ‘Note 22’), clarifies that the deductions from pay and allowances of a personnel, subject to the Army Act, are permissible to give effect to a decree of maintenance granted by a Civil Court, however, only with the sanction of the Central Government, as provided by Section 91(i) of the Army Act. The same is reproduced below:

*“22. Clause (i) - (a) This clause, like Clause (i) of Section 91 of the Army Act, was enacted mainly in order to prevent financial hardship being caused to the wife or children by the provisions of Army Act. Section 28 under which the pay and allowances of a person subject to Army Act cannot be attached in satisfaction of any decree of a civil court. In other words, if in a suit for maintenance or payment of alimony a civil court grants a decree in favour of the wife or children, the amount decreed can be deducted from the pay and allowances of a person and paid to the wife or children under this clause. **Such being the intention, deductions should not, as a rule, be ordered under this clause or clause (i) of Section 91 of the Army Act except to give effect to a decree for maintenance granted by a civil court.**” (emphasis added)”*

6. Firstly, it may be clarified that an order of maintenance can be enforced like a decree issued by a Civil Court. A two Judge Bench of the Hon'ble Supreme Court in ***Rajnesh vs. Neha (2021) 2 SCC 324***, speaking through Justice Indu Malhotra, opined as follows:

*“127. The **order or decree of maintenance may be enforced like a decree of a civil court**, through the provisions which are available for enforcing a money decree, including civil detention, attachment of property, etc. as provided by various provisions of*



CRR(F)-934-2019(O&M)

5

the CPC, more particularly Sections 51, 55, 58, 60 read with Order 21.” (emphasis added)

7. Sections 25 and 91 of the Army Act govern the deductions permissible from the pay and allowances of the Army personnel, while Section 28 provides immunity from attachment of such pay and allowances. Further, Section 33 clarifies that the rights and privileges outlined in the preceding sections are supplementary and not in derogation of any other rights or privileges conferred on them, subject to the Army Act, by any other prevailing law. A broad spectrum of rights and protections, subject to the provisions of the Army Act, has been granted to the Army personnel with an intention to ensure that they can duly perform fulfill their duties and responsibilities towards protection of the nation effectively, free from external financial encumbrances.

8. In furtherance of the legislative intent behind Sections 25 and 91 of the Army Act, while the Civil Court can pass an order directing attachment, it has been clarified by that only the Central Government is authorized to carry out the actual process of deduction of salary. This exclusive authority granted to the Central Government constitutes a distinct right for personnel governed by the Army Act. If a Civil Court issues a decree or an order for maintenance, the beneficiary of such a decree or order may present it to the Government and request that the required deduction be made under Section 91(i) by the Central Government. Reliance in this regard can be placed on the judgments rendered by respective Division Benches of the Delhi High Court in ***Jaideep Singh Sandhu vs. Union of India and others 1995 SCC Online Del 357*** and ***Sergeant Ajit Kumar Shukla vs. Union of India and others W.P.(C) 8889 of***

2020 as decided on 10.11.2020.

9. In view of the discussion above, the question framed above is answered in the negative. The salary of the petitioner could not have been attached by the learned Court below in order to enforce the order of maintenance under Section 125 Cr.P.C. However, a study of the Army Act would indicate that the respondent is entitled to approach the Central Government seeking necessary deductions to be made in order to realise the order granting maintenance of Rs. 10,000/- under Section 125 Cr.P.C.
10. Accordingly, the present petition is allowed and the impugned orders dated 04.06.2019, 23.10.2019 and 02.11.2019 are hereby set aside. Needless to say, the respondent is at liberty to approach the concerned Army authority to seek realization of the maintenance of Rs. 10,000/- per month granted to her by the learned Court below under Section 125 Cr.P.C. as well as clearance of arrears of Rs. 4,10,000/-.
11. Pending miscellaneous application(s), if any, shall also stand disposed of.

Reserved on : 11.12.2024

Pronounced on : 16.12.2024

manisha

(HARPREET SINGH BRAR)

JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No