

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.59003 of 2023
Date of decision: 03.04.2024

Rasal Singh @ Rassal Singh

... Petitioner

Vs.

Mrs. Ishya Rani

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Vivek Singla, Advocate,
for the petitioner.

MANISHA BATRA, J.

1. The present petition has been filed by the petitioner under Section 482 of Cr.P.C. seeking quashing of order dated 30.09.2023 passed by Judicial Magistrate Ist Class, Chandigarh in Execution Petition bearing No.CRL Misc.341 of 2016 titled as Ishya Rani v. Rasal Singh @ Rassal Singh, whereby the objections filed by the petitioner had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the respondent who is wife of the present petitioner filed a petition under Section 125 of Cr.P.C. seeking maintenance from him and vide order dated 19.09.2008, the said petition had been allowed and the present petitioner was directed to pay an amount of Rs.5,000/- per month to the respondent from the date of filing of the petition. As the present petitioner failed to make payment of any amount of money,

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therefore, the respondent filed a petition for execution of order dated 19.09.2008. In that very petition, the present petitioner filed objections (Annexure P-2) submitting that since he had retired from his services in the month of February 2015 and was getting pension to the tune of Rs.16,384/- only and had no other source of income whereas the respondent-wife was living with her sons in the house which was actually owned by the petitioner, therefore, he was not liable to make payment of any amount of maintenance. The respondent is shown to have filed reply (Annexure P-3) to the said objections and vide the impugned order dated 30.09.2023, the executing Court i.e. Court of Judicial Magistrate dismissed the objections so filed by the petitioner, feeling aggrieved from which the present petition has been filed.

3. It is submitted in the petition and it is argued by learned counsel for the petitioner that the impugned order dated 30.09.2023 is liable to be set aside as while dismissing his objections, the executing Court ignored the fact that the pension of the petitioner was not subject matter of attachment as per the provisions of Section 60 (1) (g) of Civil Procedure Code (For short "CPC"). It is submitted that the learned trial Court committed a grave error in holding that the maintenance amount could not be considered as debt and the provisions of Section 60 (1) (g) of the CPC were not applicable. Learned counsel for the petitioner has further argued that the learned Executing Court also ignored the fact that as per Section 11 of Pension Act, 1871, (For short "Act, 1871") the pension granted by Government could not be attached for satisfaction of

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a decree or order of any Court. It is, therefore, argued that since while passing the impugned order, the learned trial Court had not properly considered the provisions of Section 60 (1) (g) of CPC and Section 11 of Act, 1871, therefore, the impugned order is liable to be set aside, the present petition deserves to be accepted and further that the objections as filed by the petitioner before the Executing Court deserve to be allowed. To fortify his arguments, learned counsel for the petitioner placed reliance upon order dated 15.12.2017 passed by a Coordinate Bench of this Court in Crl. Revision (F) No.279 of 2017 titled as *Om Parkash v. Javitri Devi*.

4. I have heard learned counsel for the petitioner at considerable length and have carefully gone through the record.

5. It is revealed from the documents placed on record by the petitioner himself that at the time of filing of application for execution of order dated 19.09.2008 by the respondent-wife in the year 2016, an amount of Rs.6 lacs was due to be paid by him which must have been multiplied by now to much larger amount. The main plea as taken by the petitioner in his objections was that he had retired from services and was getting pension to the tune of Rs.16,384/- only and since he was not allowed to enter into his house at Jammu wherein the respondent was residing with her sons, therefore, he had to pay rent to live separately and to incur other expenses also. The learned Magistrate while dismissing the pleas as taken by the present petitioner has observed that there is no bar in attachment of pension of the husband for satisfaction of execution of

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petition under Section 125 of Cr.P.C. and a husband cannot claim exemption of pension from attachment towards payment of maintenance and the same cannot be considered as a debt.

6. On giving due deliberations to the contentions as raised by learned counsel for the petitioner and on going through the record, I am of the considered opinion that the order passed by learned Magistrate does not warrant any interference as the respondent-wife is claiming from the petitioner, arrears of maintenance allowance which are directed to be paid to her in pursuance of order passed by the Court in a petition filed under Section 125 of Cr.P.C. and the well settled proposition of law is that neither Section 60 (1) (g) of CPC nor Section 11 of Act, 1871 are applicable in such like cases. In this regard, I place reliance upon the judgment dated 23.12.2022 passed by High Court of Judicature at Madras in CrI.R.C. No.1501 of 2022 titled as **P.Amutha v. Gunsekaran**, wherein, while dealing with a similar issue, it was observed that the maintenance allowance granted to a wife cannot be considered as a debt as she is not creditor and hence the exemption under Section 11 of the Act, 1871 can also not be granted to husband. The High Court of Madras in this case had relied upon **Bhagwant v. Radhika**, 2019 NearLaw Online 443, wherein the High Court of Bombay, Nagpur Bench had observed that the exemption under Section 11 of the Act, 1871 for attachment is not attracted with regard to the maintenance allowance and also could not be considered as a debt thereby creating any bar under Section 60 (1) (g) of CPC.

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7. Since in the present case, the maintenance order was passed in favour of the respondent-wife way back in the year 2008 when the petitioner was very much in service and as he has not made any payment of the maintenance allowance to her till date due to which she was constrained to file an application for execution of the same, therefore, in my considered opinion, the respondent was well within her rights to do so and the learned Magistrate was also competent to pass an order for attachment of pension of the petitioner for the purpose of recovery of the arrears of the maintenance allowance which is not exempted under Section 11 of the Act, 1871 as well as under Section 60 (1) (g) of the CPC. It is, therefore, held that no exemption under Section 11 of the Act, 1871 and Section 60 (1) (g) of the CPC can be granted to the petitioner. More so, the petitioner is not shown to have taken recourse to the provisions of Section 127 of Cr.P.C. as per which, on proof of a change in the circumstances of any person, receiving maintenance or ordered to pay maintenance, an application can be filed under this provision and the Magistrate may make such alteration as he thinks fit, in the allowance for the maintenance and this circumstance also goes against him. No illegality or infirmity can be found in the order passed by the learned Magistrate whereby the objections filed by the petitioner were dismissed. Accordingly, the present petition is dismissed.

03.04.2024
manju
Whether speaking/reasoned
Whether reportable

(MANISHA BATRA)
JUDGE
Yes/No
Yes/No