

Bhure Vs. Gomatibai

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Court : Madhya Pradesh

Decided On : Oct-07-1980

Reported in : 1981CriLJ789

Judge : M.D. Bhatt, J.

Appellant : Bhure

Respondent : Gomatibai

Judgement :
ORDER

M.D. Bhatt, J.

1. The applicant-husband, being aggrieved by the trial Magistrate's Order dated 2-9-78, passed under Section 125(3) of the Cr. P.C. directing his imprisonment for a period of 12 months due to his default in payment of maintenance amount, has preferred the revision against the same,

2. Consequent to the Magistrate's Order dated 10-1-76 granting monthly maintenance to the non-applicant wife and the child, at the rate of Rs. 150/-in total, from the date of the application for maintenance, the non-applicant wife moved the Court for enforcement of the maintenance Order in the matter of recovery of the arrears of maintenance amount of Rs. 3,000/-. The applicant husband, after avoiding his appearance for long, finally appeared and apprised the Court that he

did not want to pay any maintenance amount and nor would he pay the same, (see Order-sheet dated 30-9-77). Considering the recalcitrant attitude of the applicant-husband, the learned Magistrate, vide the Order impugned before me. sentenced the applicant-husband to imprisonment for a period of 12 months for his default in making the payment. Hence now, the present revision.

3. The learned Counsel for the applicant husband, has urged before me that the impugned Order in question is illegal and contrary to the provisions of Sub-section (3) of Section 125 of the Code, inasmuch as, the applicant husband could not, at once be sentenced to jail in the absence of, at first, issuing the distress warrant for levying the amount due in the manner provided for levying fines which is the condition precedent for making an Order for sentencing the husband to any term of imprisonment.

4. I have considered the arguments pressed before me. On perusal of Sub-section (3) of Section 125 of the Code, it is clear that two remedies are available for the enforcement of the Order:

(1) the issue of a warrant for the levy of the fine under Section 421, Cr. P.C. by attachment and sale of any movable property of the offender and/or a warrant to the Collector empowering him to realise the amount as arrear of land revenue from the movable or immovable property, or both, of the defaulter; and

(2) sentencing the defaulter for the whole or any part of each month's allowance remaining unpaid, to imprisonment for a term extending to one month or until payment if sooner made. Imprisonment is a means of enforcement of payment, and an Order for imprisonment can be passed, only after there has been negligence to pay the maintenance. The material question to be considered is whether such an Order of imprisonment can be passed without, at first, issuing the warrant for levying the amount due. It is, no doubt, true that the normal rule is, at first, to try to seek enforcement of the Order by issuing the distress warrant in the manner provided in the Code for levying fines; but, this rule, in my opinion, is not mandatory, that is, to be necessarily followed in each and every case without considering the attending circumstances of the particular case. In the instant case, it is noticed that despite the passing of the maintenance Order as long back as

January, 1976, not a single penny has been paid by the applicant husband to the wife. The Order-sheets of the case equally show that the applicant husband avoided appearance in the Court continuously on several dates of hearing, so much so, that his presence had to be procured, at first by issuing bailable warrant and then, finally by issuing non-bailable warrant against him. The applicant husband had equally resisted the payment of arrears of maintenance amount by levelling flagrant charges of immorality against the non-applicant wife for the particular period before the passing of the maintenance Order. All this was of no avail, since, the learned Magistrate put his foot down on the dilly-dallying tactics of the applicant husband, and rejected his application in the matter of such frivolous allegations. It is equally pertinent to observe that the applicant husband, finally on 30-9-77, refused point blank to make any payment to the wife in the matter of the huge arrears of maintenance amount. Section 125 of the Code has been enacted with the object of enabling the helpless and deserted wife and children to secure the much needed relief. It has a special social purpose behind it to subserve the interest of the weaker sections of society i.e. the women class. The husband, once the maintenance Order is passed against him, cannot be allowed to play hide and seek by adopting delaying tactics and thus, make the life of his deserted wife, miserable and reckless for want of necessary amount to feed herself and her children, if any. The law must subserve the social purpose and the subtle technicalities of law cannot be allowed to stand in the way of help and succour which the wife is entitled to receive by speedy means through the agency of the Court. On scrutiny of the record of the present case, it is noticed that the applicant husband has himself stated that he had no agricultural lands of his own and that he had no other property and that he earned his living only by making bidis. In these circumstances, no useful purposes would have been served by issuing the distress warrant for recovery of the arrears of maintenance amount against him. Issue of such warrant, even if it had been issued, would have been infructuous and would have simply prolonged the agony of the non-applicant wife who is found to just struggling hard to recover the arrears of maintenance for which she has already paid process in the Court from time to time,-- but with no concrete result so far. In these circumstances, the present case, in my opinion, is one where issue of distress warrant was uncalled for and was unnecessary; and as such, the

learned Magistrate was right in ordering the imprisonment of the applicant-accused for his default of payment of the particular arrears of maintenance amount. In the particular circumstances of the case, no interference is called for in the revision preferred by such a husband who is callous and heartless and who has been attempting all along, to thwart and flout the Court's Order of maintenance.

5. In the result, thus, the revision, being without any merit, is dismissed and the impugned Order of the learned Magistrate is maintained in toto.

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