

Ram Chandra Vs. Tulsi Bai and ors.

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SooperKanoon Citation : sooperkanoon.com/754608

Court : Rajasthan

Decided On : Jan-02-1991

Reported in : II(1992)DMC364

Judge : K. Bhatnagar and; Y.R. Meena, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125(3)

Appeal No. : D.B. Criminal Appeal No. 183 of 1990

Appellant : Ram Chandra

Respondent : Tulsi Bai and ors.

Advocate for Def. : Hameer Singh and; H.S.S. Kharlia, Advs. for the Respondent
Nos. 1 to 3

Advocate for Pet/Ap. : Rajinder Choudhary, Adv.

Disposition : Appeal allowed

Judgement :

K. Bhatnagar, J.

1. On the application of Smt. Tulsi Devi respondent under Section 125, Cr.P.C, claiming maintenance for herself, her son Jaisingh and daughter Sunita, the Family Court, Jodhpur, by order dated 19.6.89, allowed the application and

ordered for payment of Rs. 200/-per month to Smt. Tulsi Devi, Rs. 150/- per month to her daughter Sunita and the same amount to her son Jaisingh from the date of the application i.e. 2.6.86, by the appellant Ramchandra. The appellant has not made payment to Smt. Tulsi Devi as per order of the Court, therefore, Smt. Tulsi Devi filed an application under Section 125(3), Cr.P.C. on 24.5.1990 in the Family Court, Jodhpur. The learned Judge, on the same date, passed an order for issuance of warrant of attachment for the sum of Rs. 21,900/- against the appellant Ramchandra. Feeling aggrieved with the order, the appellant Ram Chandra preferred this appeal.

2. The grievance of the appellant is that under the provision of Section 125(3), Cr.P.C., the Court should first issue a notice to the person against whom the order of payment is so made to show cause as to why he is not making the payment and after enquiry, warrant of attachment should be issued. Learned Counsel for the appellant strenuously contended that in the present case, after the order of maintenance, the parties entered into compromise and that was the reason for the payment not being made. In the circumstances it was all the more necessary for the Court to issue notice to the appellant to show cause as to what was the reason for non-payment.

3. Learned Counsel for the respondents controverted the submissions and stated that the fact of non-payment as well as that of compromise entered into between the parties, had been brought to the notice of the Court as per contents of the application under Section 125(3), Cr.P.C. and, therefore there was no necessity for any notice to show cause being issued against the appellant-husband Ramchandra. It has also been submitted by the learned Counsel for the respondents that on 19.6.90, the appellant Ramchandra has filed reply to the application and, therefore, the issuance of warrant of attachment stands justified. This is not in dispute that the order of maintenance was passed in favour of the respondents and against the appellant. The pertinent question arises for determination in this appeal, is whether the Court should have issued notice to the respondents on the application filed under Section 125(3) Cr.P.C. prior to the issuance of warrant of attachment. The reply, as submitted by the learned Counsel for the appellant and as is evident from the record, was filed on 29.6.90 much after

the date of issuance of warrant of attachment. Sub-section (3) of Section 125, Cr.P.C. starts to the words, 'If any person so ordered fails without sufficient cause to comply with the order.....'. The Court should first satisfy whether the non-payment was without sufficient cause. In this case, the Court having come to know about the compromise should not in our opinion, have issued warrant of attachment without affording an opportunity to the appellant Ramchandra to show whether there was any sufficient reason for him for not complying with the order of maintenance. The reasons given in the reply to the application came after passing of the order dated 24.5.1990. The reasons taken in the reply require probe into the matter as such, the order dated 24.5.1990 is not sustainable.

4. Consequently, the appeal is allowed and the order dated 24 5 1990 for the issuance of warrant of attachment passed against the appellant Ram chandra is set aside. The concerned Court shall proceed with the enquiry into the matter in the light of the contents of the application filed under Section 125(3), Cr. P.C. and the reply filed by the appellant and pass a proper order in accordance with law.