

Mani Vs. Jaykumari

Mani Vs. Jaykumari

SooperKanoon Citation : sooperkanoon.com/827512

Court : Chennai

Decided On : Jun-18-1998

Reported in : II(1998)DMC533

Judge : M. Karpagavinayagam, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 82, 83, 125, 125(1), 125(3), 421, 421(1), 431 and 466; [Indian Penal Code \(IPC\), 1860](#) - Sections 22; General Clauses Act, 1893 - Sections 36

Appeal No. : Criminal Revision Case No. 717 of 1996 and Crl. M.P. No. 3204 of 1996

Appellant : Mani

Respondent : Jaykumari

Advocate for Def. : N. Anand Venkatesh, Adv.

Advocate for Pet/Ap. : A. Packiaraj, Adv. as Amicus Curiae; P. Senthurpandian, Adv.

Disposition : Revision dismissed

Judgement :

M. Karpagavinayagam, J.

1. Here is an interesting question of law, viz., whether future salary of husband can be attached for the recovery of future period of maintenance by the wife in a maintenance proceedings under Chapter IX of the Code of Criminal Procedure ?

2. The facts of the case are as follows:

(a) The petitioner Mani is the husband of the respondent Jaykumari. She obtained an order in M.C. No. 4 of 1993 on the file of Judicial Magistrate, Ambasamudhram, under Section 125, Criminal Procedure Code for the monthly maintenance at the rate of Rs. 400/-.

(b) Since the husband is said to have committed default in paying the monthly maintenance, she applied to the Court for the recovery of the amount due. Despite the service of notice on the petitioner, who is working as an Office Assistant in Agricultural Department of Tamil Nadu Government, he did not choose to appear before the Court. Therefore, considering the various aspects, the learned Magistrate directed attachment of salary payable to the petitioner/husband by the Department.

(c) The petitioner even without approaching the Court to recall the warrant of attachment, has come forward before this Court with this revision challenging the warrant of attachment of salary contending that the impugned order was passed without jurisdiction.

3. In brief, the following are the contentions urged by the Counsel for assailing the impugned order:

(1) Under Section 125(3) Criminal Procedure Code, the wife is entitled to claim arrears of maintenance for the period of one year only. The respondent herein filed an application in Crl.M.P. No. 3470 of 1995 claiming arrears of maintenance from November, 1994 to August, 1995 for a period of 10 months. But, the learned Judicial Magistrate by the impugned order dated 12.2.1996 ordered for the recovery of maintenance by attachment of salary from November, 1994 to January, 1996 for a period of 15 months totalling about Rs. 6,000/-. This is impermissible under law, in violation of Section 125, Criminal Procedure Code.

(2) By virtue of the impugned order, the salary was attached for 30 months at the rate of Rs. 600/- per month, that is, Rs. 200/- towards the past arrears and Rs. 400/- towards the maintenance for every month from February, 1996 to August, 1998. The learned Magistrate thus exceeded the jurisdiction by attaching the future salary which has not accrued to the petitioner. Nothing is provided under the Code of Criminal Procedure, empowering the learned Judicial Magistrate to attach the future salary which is not a tangible corporeal property, that too, before it accrues to the petitioner.

(3) In the impugned order it is further provided for attachment of salary of Rs. 400/- as the future maintenance from the future salary from September, 1998 onwards. There is no power for the Magistrate to attach future salary towards the future maintenance.

4. I heard Mr. Senthurpandian, the Counsel for the petitioner and Mr. Anand Venkatesh, the Counsel for the respondent, at length and perused the citations referred to by them.

5. In view of the peculiar and interesting question of law which arises in this case as referred to above, this Court requested Mr. Packiaraj, the learned Counsel, to assist the Court. Accordingly, Mr. Packiaraj, who has gladly consented to assist the Court, submitted at great length after meticulous preparation on various aspects of the question posed in this case in a neat and lucid manner which enabled the Court to delve deep into the subject matter and to have a final conclusion.

6. The wife, the respondent herein filed a petition claiming maintenance in M.C. No. 4 of 1993. After enquiry, the learned Judicial Magistrate awarded maintenance of Rs. 400/- by the order dated 15.9.1993. Previously, since the petitioner/husband did not pay the amount of maintenance, the respondent filed a petition for enforcement of the maintenance order in CrI.M.P. No. 2344 of 1993 claiming arrears from 8.4.1993 to 30.9.1993. Again, she filed a petition in CrI.M.P. No. 136 of 1994 claiming arrears from October, 1993 to December, 1993. Since there was default in subsequent months, she filed a third petition in CrI.M.P. No. 4025 of 1994 claiming arrears of maintenance from January, 1994 to October, 1994. This

would show that every time, the petitioner-husband defaulted in his payment which drove the wife to approach the Court to file an application for getting the maintenance arrears.

7. The present petition which gave rise to the impugned order was filed on 4.10.1995 in CrI.M.P. No. 3470 of 1995 claiming maintenance arrears from November 1994 to August, 1995 for 10 months. Notices on several occasions were served on the petitioner through the Department. However, he did not appear. Therefore, the wife requested the Court for attachment of salary in the very same application.

8. On considering the request and taking into account the attitude of the husband in having defaulted on various occasions earlier and having not responded to the notice sent by the Court in the above application even after receipt of the same and having considered the object of the Legislation for introduction of Section 125 Cr. P.C, the learned Judicial Magistrate has passed the following order :

(1) The wife is entitled to the maintenance of Rs. 4,000/- for the period from November, 1994 to August, 1995 for 10 months as claimed in the petition. The application for enforcement of the order was filed in October, 1995 and disposed of in February, 1996. Therefore, the wife is entitled to the maintenance of further 5 months from September, 1995 to 31.1.1996. Thus, the wife is entitled for Rs. 6,000/- for the period of 15 months, that is, from November, 1994 to 31.1.1996 at the rate of Rs. 400/- per month.

(2) The salary is to be attached for 30 months at the rate of Rs. 600/- per month from February, 1996 to August, 1998, that is, Rs. 200/- for every month towards the past arrears of Rs. 6,000/- maintenance and Rs. 400/- for every running month towards the monthly maintenance.

(3) After the expiry of 15 months, Rs. 400/- towards the monthly maintenance is to be attached.

9. The effect of this order is that the Assistant Director of Agriculture, Ambasamudram, under whom the petitioner is working as Office Assistant, was

directed to deduct a sum of Rs. 600/- every month from the salary from the month of February, 1996 upto the month of August, 1998 and thereafter to deduct Rs. 400/- for every month and send the same to the wife.

10. Regarding the first contention, there is no difficulty in coming to the conclusion that the learned Judicial Magistrate is empowered to pass an order directing for the payment of the past arrears even though those arrears would relate to the period for more than one year. It is, of course, true that the application has been filed by the wife before the Court claiming arrears only for 10 months from November, 1994 to August, 1995. This application was filed on 4.10.1995. However, the learned Judicial Magistrate ordered for the payment of arrears for 15 months which exceeds one year.

11. As per Section 125(3), Criminal Procedure Code, the wife shall have to file an application within a period of one year from the date on which it became due. It does not prescribe that the Court is empowered to order for arrears of maintenance for the period of one year only. In this case, there is no dispute in the fact that the arrears became due in November, 1994. This application has been filed on 4.10.1995. Therefore, this is within the time as contemplated in Section 125 of Criminal Procedure Code.

12. Hon'ble Justice Arunachalam (as he then was), while considering the question as to whether the Court could direct for the enforcement of the maintenance order for period over a year, in Shanmugham v. Andal, 1989 LW 513, would hold as follows :

'The next question to be considered is, whether the trial Magistrate was right in permitting recovery of amount for a period over a year in the light of the first proviso to Section 125(3), Criminal Procedure Code. On facts, it is very clear that the Magistrate had passed the order of maintenance on 11.8.1986 awarding maintenance to the respondent from 24.9.1983. The petition for enforcement has been filed even on 20.10.1986 slightly over two months after the passing of the order of maintenance. The amount of maintenance does not become barred by limitation simply because the order contemplated by Sub- section (1) of Section 125, Cr. P.C., had been passed more than a year after the date of the original

application. The maintenance becomes due, although with effect from a back date only when the order granting maintenance is passed and naturally the limitation can run only from that date of the order. There can be no doubt in this case that the application for recovery had been made within a period of one year from the date on which it became due.' (Emphasis supplied)

13. In view of the above decision, on the basis of the first principle, I am of the opinion that the decisions, namely, *Ganga Ram v. Jakali & Ors.*, , and *Sunder Ganpat Bekal v. Bhagirathi Sunder Bekal*, , cited by the Counsel for the petitioner expressing contra view have not decided the point correctly.

14. As regards the second contention, it is the submission of the Counsel for the petitioner that the future salary cannot be attached for the past arrears. In support of the said submission, the Counsel for the petitioner cited the decision in *State v. Doraiswamy*, (Mysore), and *Mating Soe Elaing v. Ma Thein Khin*, AIR 1934 Ran 82.

15. According to these decisions, the future salary was not a tangible corporeal property available for seizure and the same would not belong to the husband because he could not be said to have earned the same and therefore, there could be no attachment of future salary.

16. As pointed out correctly by the learned Counsel for the respondent, this point has already been decided by this Court in 1989 LW 513 (supra). The relevant observation by Hon'ble Arunachalam, J. (as he then was) is this :

'On the totality of the legal provisions taken in conjunction with the social purpose behind Section 125, Cr. P.C, a liberal interpretation will have to be given and naturally in my opinion, the view of the Andhra Pradesh and the Karnataka High Court in *Ahmed Pasha v. Wajid Unnisa & Ors.*, ; In re *Yerasuri Lakshminarayana Murthy*, ; and *K. V. Rudraiah v. Smt. B.S. Mudda Gangamma*, 1985 Cri. LJ 707, commend acceptance with respect. A wife cannot be placed in a position worse than the money lender. Logically, therefore, the views of the Calcutta, Rajasthan and Goa High Courts have to be dissented in the light of the approach I have made keeping in view the social commitment of this legislature... I therefore hold

that the salary inclusive of the future salary of the husband can be attached in the manner provided under Section 421(l)(a), Criminal Procedure Code, and the 'salary' will fall within the concept of 'movable property'.'

17. In fact, the decisions cited by the Counsel for the petitioner, namely, and AIR 1934 Rang 82 have been considered and the views expressed in those decisions were not accepted by the learned Judge. I am entirely in agreement with the said view expressed in 1989 LW 513 (supra).

18. Apart from the reasons given in the said decision to hold such a view, I may add some more.

19. Under Section 125(1), Criminal Procedure Code, the learned Magistrate may upon proof of neglect or refusal to maintain the wife direct the husband to make a monthly allowance for the maintenance of his wife at such monthly rate not exceeding five hundred rupees, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.

20. When the order of the Magistrate granting maintenance was not complied with for months together, what is the remedy The remedy is readily provided in Section 125(3), Criminal Procedure Code, which reads thus:

'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 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.'

21. The manner for levying fines is provided in Section 421, Criminal Procedure Code. Section 421 reads as follows :

'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;

(b) xxx xxx xxx'

This provision alone would empower the Magistrate to make an order of attachment of salary.

22. The contention of the Counsel for the petitioner is that the future accrual of the salary of the husband is not yet a tangible movable property in his possession and hence it could not be said to be the movable property within the meaning of Section 421, Cr. P.C. According to him, the words 'movable property' in Clause (a) of Section 421(1) of Cr. P.C. referred to only tangible movable property which could be seized or attached and which must be belonging to the defaulter.

23. It is further submitted that though movable property is not defined in the Code of Criminal Procedure, the definition is given in Section 22 of the Indian Penal Code. Section 22 of I.P.C contains the definition of 'movable property' and reads :

'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 is attached to the earth.'

It is on the basis of this definition, the learned Counsel would submit that Section 421 of the Code of Criminal Procedure should be read to mean only the corporeal, tangible movable property.

24. This submission of the Counsel for the petitioner, in my view, does not reflect the reality of the situation. Section 2 of the Code of Criminal Procedure contains the definition and it reads, as far as it is relevant for the purpose of this case :

'In this Code, unless the context otherwise requires-

(y) words and expression used herein and not defined but defined in the Indian Penal Code (45 of 1860) have the meanings respectively assigned to them in that Code.'

25. The definition of 'movable property' given in the Indian Penal Code, is basically meant for the provisions contained in the Indian Penal Code itself. The Penal Code classifies the offences under various heads. Many of those heads deal with various items of movable property. For instance, Chapter XII of Indian Penal Code deals with offences relating to coins and government stamps. Chapter XIII deals with offences relating to weights and measures. Chapter XVII deals with movables which could be stolen, robbed or extorted. These chapters deal with tangible corporeal property. But there are offences categorised under some other heads which deal with intangible movable property. Those are the offences relating to documents and property marks covered by Chapter XVIII of the Penal Code. Offences described in Chapter XVIII, however, do not use the word 'movable property' at any place for referring to the objects in respect of which the offences have been committed.

26. When the framers of the Indian Penal Code were aware of and were, in fact, intending to provide for defining and penalising the offences pertaining to movable property, both tangible and intangible, the connotation of the expression 'movable property' ought to be restricted to certain types of property when the intention was to deal with tangible movable property alone. This does not mean that the Indian Penal Code, by itself, does not recognise the distinction between the tangible movable property and intangible movable property at all. When the Indian Penal Code itself does not do away with this distinction, it cannot be said that the distinction of 'movable property' as corporeal property of every description was supposed to apply for all purposes. In itself, the aforesaid definition given in the Indian Penal Code is restricted to certain objects.

27. In this context, useful reference could be made about General Clauses Act, 1893. The Code of Criminal Procedure, 1973 is a Central Legislation. Therefore, for interpreting the provisions contained in the Code of Criminal Procedure, a reference has got to be made to the provisions contained in the General Clauses Act. Section 3 of the said Act deals with general definitions. Sub-clause (36) of Section 3 of the aforesaid Act defines 'movable property' thus:

'36. 'movable Property' shall mean property of every description, except movable property.'

From this definition, it is manifest that the General Clauses Act defines the expression 'movable property' so as to include therein not only tangible corporeal movable property, but also the intangible movable assets such as debts, etc. a right to receive the salary and wages from an employer.

28. Therefore, the definition of moveable property as contained in Section 22 of I.P.C., which was meant for punitive purposes, could not be utilised for the purpose of determining the extent, scope and enforcement of the civil rights settled in proceedings in Chapter IX of Cr. P.C. In other words, the context and use of the expression 'movable property' in Section 421 of the Code of Criminal Procedure is altogether different when that provision is to be read in the context of the civil rights, which are to be adjudged upon and settled by a decision of non-punitive maintenance proceedings under Chapter IX of the Code of Criminal Procedure than the context and use of that expression in punitive proceedings categorised in the Indian Penal Code.

29. The definition of expression 'movable property' given in the Indian Penal Code cannot be legally inducted into the provisions relating to the maintenance proceedings for the purpose of determining the scope of the application in the above proceedings, much less for the enforcement of the rights determined in the proceedings under Chapter IX of Cr. P.C.

30. The Supreme Court has abundantly made it clear that the provisions given in Chapter IX of the Code of Criminal Procedure comprising of Sections 125 to 128 constitute a complete Code in itself. It further held that the proceedings referred to in Chapter IX of the Code of Criminal Procedure are basically of civil nature, that they are certainly not punitive and that the rights of the parties have got to be determined with reference to the object, which the proceedings are expected to serve, as held in *Nandlal Misra v. Kanhaiyalal Misra*, : 1960 CriLJ1246 , and *Mst. Jagir Kaur v. Jaswant Singh*, : [1964]2SCR73 .

31. In Civil Law some of the sections provide for the procedure for attachment of intangible movable property, such as, debt, share, share in movables, salary or allowances of the Government servants or of Railway employees or of employees of the local Authority and of private employees. Similarly, the Criminal Court also has got powers to attach intangible movable assets for the purpose of recovery, out of the same, of certain amounts.

32. If any person against whom a warrant has been issued is found to be absconding, the Criminal Court has power to issue a written proclamation under Section 82, Cr. P.C. Section 83 provides for the order of attachment of any property, movable or immovable, or both belonging to the proclaimed person. For this purpose, Sub-section (3) is more relevant which would say as follows :

'If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made-

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.'

Therefore, the necessary conclusion that can be arrived at from these provisions, is that the movable property, whether tangible or intangible or even a debt can be attached by a Criminal Court in accordance with the abovesaid provisions of law.

33. It is also evident that Section 421(1)(a), Criminal Procedure Code does not indicate that tangible and corporeal property alone could be attached by issue of warrant. It is also quite clear from the above discussion that it cannot be disputed that the salary as such is a movable property and the Criminal Courts are empowered to attach any intangible movable property.

34. The contention that the future salary does not belong to the husband because he cannot be said to have earned his future salary, also is not a legally sustainable

because some of the provisions in the Code of Civil Procedure, does recognise the existence of such a property and provide for a procedure for the attachment of the future salary.

35. It is to be noted in this connection, that the said provisions, in fact, do not speak of future salary at all, though the aforesaid provisions speak of the attachment of the salary accruing from time to time to the person whose assets are to be seized. Therefore, the expression 'attachment and sale' used in Sectional (I)(a) of the Code of Criminal Procedure does not necessarily mean tangible corporeal property; on the other hand, it includes 'debt' as well.

36. If a person, from whom the fine amount is to be recovered in a criminal case, in the manner prescribed for the levy of fines, has no tangible movable property, but has only some assets of intangible movable property, it cannot definitely be said that the State shall not be entitled to recover the amount of fine or other amounts which are leviable as fine, by proceeding against the aforesaid intangible movable assets. Therefore, under Chapter IX of the Code of Criminal Procedure, it would be reasonable and legal to hold that the intangible movable assets of such a person would also be liable to be attached, for realising the amount of fine.

37. Hence, in my view, future salary can be attached for the past arrears under Section 421(I)(a), Cr. P.C. The second point is answered accordingly.

38. The third point, as referred to above, is quite interesting. Regarding this point, it is stated that there is no authoritative pronouncement till date.

39. According to the learned Counsel for the petitioner, assuming that future salary can be attached for the recovery of past arrears of maintenance under Section 125(3) Cr. P.C., it does not confer power to the Courts to attach the future salary for the future maintenance. By ordering the attachment of the salary for the future maintenance, in the instant case, the learned Judicial Magistrate exceeded his jurisdiction and in fact, he exercised the jurisdiction not really vested upon him under any of the provisions of the Cr. P.C.

40. This submission at the first blush looks very attractive and it drives this Court to go deep into the matter.

41. Section 125(1) of the Code empowers the learned Magistrate to order directing the husband to pay maintenance to the wife after enquiry. Sub-section (3) of Section 125, Cr. P.C. provides that if the person concerned fails without sufficient cause to comply with the order, the learned Magistrate may issue a warrant for collecting the amount due in the manner provided for collecting fines.

42. Hence, the combined reading of these two clauses of the said section makes it clear that the order directing the husband to pay the maintenance shall first be made and when he fails to comply with the order without sufficient cause, only then, Sub-section (3) can be invoked by which the learned Magistrate can issue a warrant for collecting the amount due in the manner provided for collecting fines. It is to be noticed that Sub-section (3) would specifically provide that the order of warrant can be issued for every breach of the order passed under Section 125(1), Cr. P.C.

43. Therefore, combined reading of Section 125(1) and Section 125(3) makes it manifestly clear that only in the event of the husband's default in making payment, a recourse can be taken under Sub-section (3) of Section 125 of Cr. P.C.

44. In other words, unless there is a breach of order and unless the said breach was without sufficient cause, the learned Magistrate cannot invoke Section 125(3) Cr. P.C. to issue a warrant of attachment of salary. In the instant case, the impugned order indicates that there is a direction for attachment of salary even though there is no breach of the order since it relates to the maintenance amount for the future months.

45. However, in this context, this Court has to identify the actual meaning of Sections 125(1) and 125(3), in the light of the real purport and purpose of the various sections contained in Chapter IX of the Code of Criminal Procedure, dealing with the maintenance proceedings. The scope and object with the underlining meaning have been elaborately dealt with by this Court, the other High Courts and the Apex Court in various decisions which are given below :

(1) Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal, : 1979 CriLJ3 ;

(2) Kamatchi and Anr. v. Veluchamy ;

(3) Vasudev Pardasani v. Smt. Nirmala, II (1996) DMC 309 (Rajasthan);

(4) Ranbir Kaur v. Gurnam Singh ;

(5) Kiritkant D. Vadodaria v. State of Gujarat, II (1997) DMC 164;

(6) Bai Tahira v. Ali Hussain F. Chouthia, : 1979 CriLJ151 .

46. As per these decisions, Section 125 is a measure of social justice and specially enacted to protect women and children and falls within the Constitutional sweep of Article 15(3) reinforced by Article 39. The sections in Chapter IX calling for construction by Courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the Constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out the interpretation out of two alternatives which advance the cause - the cause of the derelicts.

47. This chapter provides a mode of preventing vagrancy or at least of preventing its consequences. They are intended to fulfil a social purpose, compelling a man to perform the moral obligation which he owes to society in respect of his wife and children by providing a simple, speedy but limited relief they seek, to ensure that the neglected wife and children are not left beggared and desdited on the scrap heap of society.

48. These provisions confer a generous jurisdiction on the statutory functionary and therefore, a broader perception and appreciation of the facts must dictate the judgments in such cases. Therefore, in the interpretation of the language of these provisions, the social purpose which they are intended to serve and a compassionate outlook, which the sense and meaning of the words used in the language of these provisions admit of should not be overlooked and ignored.

49. While dealing with the ambit and scope of these provisions, it has to be borne in mind that the primary object is to give social justice to woman, child, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves. These provisions provide a speedy remedy to those who are in distress. They are intended to achieve this special purpose. The dominant purpose behind these benevolent provisions is that the wife, child, etc. should not be left in a helpless state of distress, desditution and starvation. Having regard to this social object the provisions in Chapter IX have to be given a liberal construction to fulfil and achieve this intention of the legislature.

50. The Apex Court in *Tahira v. Ali Hussain Fissali*, : 1979 CriLJ151 , while giving a way out to understand the meaning of a particular section, would observe as follows:

'The meaning of meanings is derived from the values in a given society, and its legal system. Article 15(3) has compelling compassionate relevance in the context of Section 125 and the benefit of doubt, if any, in statutory interpretation belongs to the ill-used wife and the derelict divorcee.'

51. The inability of the wife, child, etc. to maintain themselves could lead to social problems. Unless the consequences of such inability were checked by providing appropriate measures, large scale vagrancy could be the probable off-shoot. Therefore, the Parliament in its desire to find a solution to this problem evolved a procedure which has found expression in Chapter IX. These provisions shall be administered carefully, since conscience of the Constitution tells us that these have been inspired by the spirit of social justice. Law is a social mechanism to be used for the advancement of society. It should not allowed to be the dead weight on the society.

52. These are intended to provide immediate succour to destitute wives, children, etc. It is, therefore, apt that such beneficent legislation should not be narrowly construed so as to defeat its purpose on mere technicalities. In other words, the approach of the Court in interpreting these provisions must be benevolent and justice-oriented. The order must be passed keeping in view the principles of equity, justice and good conscience. The humane considerations must dominate

the scene. The duty of the Court while enforcing these provisions is much heavier. The Courts need not make just a negative approach, rather it must be positive and affirmative action-oriented.

53. Therefore, while granting speedy and limited relief which is sought to be engraved under this Chapter, the Court has necessarily to follow the basic principle that a poor woman shall not be asked to run from pillar to post for getting speedy and limited relief.

54. In other words, a liberal interpretation has to be given while looking into the provisions, taking into consideration on the totality of the legal provisions taken in conjunction with the social purpose behind Section 125, Criminal Procedure Code. In the light of the above guidelines, I shall now consider scope and purport of Section 125(3), in order to give the fruit of the relief already granted under Section 125(1) Criminal Procedure Code to the wife.

55. While dealing with the second point as referred to above, an argument was advanced by the Counsel for the petitioner that future accrual of the salary of the husband cannot be termed to be a 'movable property' as contained in Section 421 of Cr. P.C. for the purpose of recovery of the arrears, as he has not obtained the money. While answering the said question, Hon'ble Justice Arunachalam (as he then was) in the decision in 1989 LW 513 (supra), while holding that the future salary can be attached for the past arrears as the same can be considered as a movable property under Section 421(a), has followed one judgment of Karnataka High Court in K.V. Rudraiah v. Smt. B.S. Mudda Gangamma, 1985 Cri. LJ 707. This decision of Karnataka High Court while referring about the future salary, would observe that the order of attachment passed under Section 125(3), Cr. P.C. even prior to the disbursement of salary would be operative only when the said salary became due. The relevant observation is this :

'The warrant issued under Clause (a) of Section 421(1) becomes effective, the moment the salary accrues due to the person concerned or when that money becomes payable to him and until then the direction contained in the attachment warrant remains dormant.'

56. In : 68(1989)CLT676 (supra), the Orissa High Court, while referring the said judgment, has supported the view expressed by the Karnataka High Court in the following words:

'According to the learned Judge, once the Court has issued writ of attachment of salary in default of payment of arrears or current maintenance without sufficient cause, the salary when becomes due or any part thereof shall be liable for attachment. If during any particular month maintenance is paid, the writ of attachment shall remain dormant. In any case, for default, until the salary shall continue to remain dormant so as to revive at the end of the month. Unless such a practical view is taken, deserted wives and children shall be rendered to starvation and destitution. It is common experience in Courts that in a sizable number of cases under Section 125 of the Code, the deserted wives have to depend upon the salary of the erring husbands for maintenance. Unless a middle course, as has been commended by the Karnataka High Court, is adopted and the erring husbands are not allowed to remain scot-free on the principle that future salary is not liable for attachment, a great injustice will be done to the deserted wives and the children who shall be driven to hunger and destitution.'

57. The same principles have been reiterated by the Bombay High Court in : 1994(2)BomCR695 (supra). These observations, in my view, would give the correct answer to the third question posed in this case. No doubt, the observations made in the judgments supra, while interpreting Section 125(3) read with Section 421(a), as regards the future salary, but the close reading of these observations would make it obvious that it would be applicable to the future maintenance also.

58. As indicated earlier, the remedy under Section 125(3), by way of warrant of attachment is available only on the breach of the order. In other words, the order of attachment for salary under Section 125(3), Cr. P.C. would not become operative until there is a breach of the main order passed under Section 125(1) Cr. P.C. Therefore, it can be safely concluded that though these orders of attachment of future salary for the future maintenance were passed even before the default in the circumstances of the case, they cannot be said to be wrong because those orders would come into effect only when the salary became payable to the

husband at the end of the month. Similarly, it can as well be stated that these orders of attachment would become operative only when the amount became due to the wife, as contemplated under Section 125(3), Cr. P.C. If before the end of any month, the husband paid to the wife the maintenance directly or through Court, the warrant for attachment of salary earlier passed would not become operative and the same would remain dormant. But, once there is a default at the end of the month, the warrant of attachment earlier passed which remains dormant, would get revived and become effective.

59. This sort of interpretation is quite possible, in the light of the scope and object of Chapter IX relating to the maintenance proceedings, as mentioned above. Unless such an interpretation is given, the deserted wife and children have to depend upon the salary of the erring husband towards the maintenance for years together. Unless this middle course as adopted by the Karnataka High Court in 1985 Cri LJ 707 and Orissa High Court in : 68(1989)CLT676 referred to supra, the erring husbands would be allowed to go scot-free leaving wives and children in the lurch, thereby a great injustice would be done to them who will be driven to hunger and destitution.

60. This sort of interpretation, in my view, would provide a new outlook in order to advance the object of interpretation of Chapter IX of Cr. P.C. and it also serve the purpose for which the legislation was brought into force for the benefits of the deserted wives and children.

61. In this context, it would be relevant to refer Section 466, Cr. P.C. It would provide that no attachment made under this Code shall be deemed unlawful on account of any defect in the writ of attachment. The reading of this section would make it clear that merely because the order of attachment passed by the Court under Section 125(3) even before the breach for the future salary towards the future maintenance cannot be deemed to be unlawful as provided under Section 466, Cr. P.C, since, in my view, as held by the Karnataka High Court and Orissa High Court, which was followed by justice Arunachalam, in 1985 Cri LJ 707 and : 68(1989)CLT676, the order of attachment would become effective not on the date of the order but on the date on which salary became payable to the husband and

the maintenance amount became due to the wife.

62. With reference to Section 466, Cr. P.C. 'Hon'ble Justice Punchhi' as the Single Judge of the Punjab and Haryana High Court had an occasion to refer to the object of 125 proceedings. In that case, warrants were issued by the Magistrate for recovery of the maintenance amount for the period from 17.5.1981 to 18.5.1982 and from 19.5.1982 to 18.2.1983 for attachment of salary. It was observed that such warrants could, by no means, be called effective attachment of future salary. The relevant observation is as follows :

'It is precisely for this reason that Section 466 of the Code regarding objections to writs of attachment is brought in. For it cannot be forgotten that Section 125 Criminal Procedure Code, provides a summary remedy to the wife or child to claim maintenance for herself in a standard of living which is neither luxurious nor penurious but is moderately consistent with the status of the family. No technical impediment in that direction, as is the mandate of the Code, can be allowed to frustrate that object or to elongate the process or proceedings. Thus, in my view, the attachment orders passed by the learned Magistrate were quite in order and cannot be quashed or modified in these proceedings.'

63. In that view of the matter, I have no hesitation to hold that the impugned order relating to the attachment of the future salary for future maintenance cannot be said to be unlawful, in the light of Section 466, Cr. P.C. However, the impugned order, as earlier pointed out, would remain dormant till the end of every month, in case of default, at the beginning of the next month the warrant of attachment would become operative.

64. In the instant case, as narrated earlier, the wife was driven from pillar to post for making several applications before the Executing Court to collect the arrears of maintenance amount. When those efforts proved to be futile, the learned Magistrate deemed it fit to pass such an order directing for the attachment of salary for the future maintenance as well.

65. In view of all these considerations, there is no difficulty to hold that the warrant for the attachment of the future salary of the petitioner towards the recovery of the

past maintenance as well as future maintenance as claimed by the wife, can be issued by the Magistrate and the same would become operative when the salary became payable to the husband at the end of the month and when the maintenance amount became due to the wife.

66. Therefore, in my view, the impugned order is valid in law. The learned Magistrate has not exceeded his jurisdiction and in fact, he exercised the jurisdiction really vested upon him under the relevant provisions of the Cr. P.C, as quoted above.

67. Mr. A. Packiaraj, Amicus Curiae appointed by this Court, requests this Court to look into the matter from yet another angle. According to him, the impugned order issuing warrant of attachment of salary for future maintenance would be well within the power as per Sections 128 and 431, Cr. P.C. It is submitted that the reading of the relevant sections under Chapter IX, Cr. P.C. would give a clue that the Court, can straightaway pass an order of enforcing the future maintenance as well even without resorting to Sections 125(3) and 421, Cr. P.C.

68. Section 125(1) and (3), Cr. P.C. deals with the award as well as the procedure contemplated for collection of past maintenance in default. But, Section 128, Cr. P.C. deals with enforcement of the order of maintenance in general term.

69. In this context, it is pertinent to note that Section 431, Cr. P.C. which makes it clear that warrant can be issued by the Court as in the case of levy of fine, for recovery of any money payable by virtue of any order made under this Code.

70. Though Sections 125(3) and 421(a) contemplate about orders in default, Section 431, Cr. P.C. does not visualise any such situation. Under this section, if the amount has to be payable, the learned Magistrate may as well be justified to pass order directing to issue warrant of attachment under the above said section.

71. As indicated earlier/Section 125(3) of Cr. P.C. relates to the power of the Magistrate for enforcement of the order for every breach of the same. Section 128, Cr. P.C. which does not contemplate any such breach, reads thus :

'128. Enforcement of order of maintenance-A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due.'

72. Similarly, as we have seen earlier, Section 421(l)(a), Cr. P.C. would relate to taking action for recovery of fine which was not paid.

73. However, Section 431, Cr. P.C. does not provide any such violation of the order. Section 431, Cr. P.C. reads thus :

'431. Money ordered to be paid recoverable as a fine: Any money (other than a fine) payable by virtue of any order made under this Code and the method of recovery of which is not otherwise expressly-provided for, shall be recoverable as if it were a fine.'

74. The mode of recovery as levy of fine has been given under Section 421(l)(a), Cr. P.C. for the past arrears in case of breach of the maintenance order under Section 125(3). However, there is no mode of recovery prescribed for the recovery of the future maintenance. The order of maintenance was passed by the learned Magistrate under Section 125(1) directing the husband to pay the money to the wife. For instance, Section 250, Cr. P.C. provides for imposition of compensation for accusation without reasonable cause. Section 357, Cr. P.C. also would enable the Court to order compensation in case of conviction. These amounts are being recovered only under Section 431. Similarly, Section 431, Cr. P.C. can be invoked for the collection of the future maintenance ordered by the Court under Section 125(1), Cr. P.C. without recourse to Section 125(3) and Section 421 of Cr. P.C.

75. Incidentally, this question has been considered by the Gauhati High Court in Hazi Abdul Khaleque v. Mustt. Samsun Nehar . The relevant observation referring Section 128, Cr. P.C. is this:

'It only provides for furnishing of copy of the order. It also provides that such order could be enforced by any Magistrate at any place where the person against whom it was made may be, which only means that any Magistrate of the place where the person may be may enforce the order on being satisfied about the identity of the parties and also that dues had not been paid. As said before how was the dues to be recovered i.e., the procedure was not provided.

Under Chapter XXXII, Section 431 of the Code provides that 'Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine'.

The proviso to Section 431 is not relevant here. The order for payment of maintenance was an order under the Code for payment of money, for the recovery of which no method had been expressly provided. Accordingly, under Section 431 of the Code, I think the maintenance money could be recovered, as if it were fine.'

76. In the commentary on Criminal Procedure Code by Sarkar, 7th Edition, some of the paragraphs dealing with the scope and application of Section 431 would also give an indication that Section 431 can be applied for the collection of maintenance which is as follows :

'Unless otherwise expressly provided for (see Sections 250, 143(3), 359) any money (other than fine) payable by any order passed under the Code, e.g., (under Section 125 or Section 250) shall be recovered as if it were a fine (see under Section 421). In order that Section 431 may apply it must be shown that the order is such that it can be passed under the Code.'

77. In view of this, if any money payable by the order of the Magistrate to the wife, in the absence of mode of recovery for collection on future maintenance, the Magistrate is well within the power to pass an order directing the warrant of attachment of salary under Section 431 of Cr. P.C, even without the help of Sections 125(3) and 421, Cr. P.C.

78. The above contention elaborately put forward by Mr. A. Packiaraj, Amicus Curiae, appears to me to be with some force. However, I do not propose to pronounce finally upon this contention, because I have held in earlier paragraphs that the impugned order can be passed in the facts and circumstances of the case even under Sections 125(3) and 421, Cr. P.C.

79. In view of what is stated above, the revision, which has no merit, is dismissed. Consequently, Crl.M.P. No. 3204 of 1996 stands dismissed.

80. Before parting with this case, I shall record my appreciation for the valuable assistance rendered by Mr. A. Packiaraj, Amicus by his lucid representation on a thorough preparation.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com