
(1985) 06 KAR CK 0008
In the Karnataka High Court
Case No : Criminal Petition No. 440 of 1984

D. Venkatesan

APPELLANT

Vs

P. Lalitha

RESPONDENT

Date of Decision : 14-06-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 126, 126 (1), 128

Citation : (1985) ILR (Kar) 2611

Hon'ble Judges : Venkatesh, J

Bench : Single Bench

Advocate : Urval N. Ramanand, for the Appellant; A. Narayana Murthy, for the Respondent

Judgement

Venkatesh, J.—The petitioner wife has obtained an order of maintenance against the respondent u/s 125 of the Cr.P.C., in the Court below. She is executing that order contending that the amount awarded has not been or is not being paid to her in accordance with the direction contained in the order. Learned Metropolitan Magistrate, V Court, Bangalore, has issued a levy warrant to recover from the petitioner in all a sum of Rs. 5,500/- which was the amount claimed as arrears by the wife.

2. It may be noted that the petitioner's husband is a resident of Madras City and is presently working as a Technical Assistant in the I.I.T at Madras. Challenging the warrant issued for levying the amount due, he contends that the learned Magistrate had no jurisdiction to issue a levy warrant against him who is not residing within his jurisdiction and further contends that, even otherwise, he should have been heard before issuing that levy warrant, so that he could have had his say in the matter.

3. There is no merit in the first submission made on behalf of the petitioner. Section 125(3) r/w. S. 128 of the Cr.P.C, contain clear guidelines as to how, by whom and where/at an order for maintenance can be enforced. And the said provisions read thus :

125. (1) If any person having sufficient means neglects or refuses to maintain.

(a) (b) and (c).....

(d) xxx xxx xxx a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance xxx.

(2)

(3) 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 :

Provided that no warrant shall be issued for the recovery of any amount due under this Section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due :

Provided further that if such person offers in maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this Section not with standing such offer, if he is satisfied that there is just ground for so doing.

Explanation - If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) and (5).....

128. 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.

4. Section 128 is supplementary to Section 125(3) enables the Magistrate who will have awarded maintenance to en-force the same at the instance of the beneficiary.

5. In order to understand the scope of Section 128 it is better we know as to who are all the Magistrates who can be requested by those entitled to claim maintenance to order for maintenance. Section 126 of the Code says that such action may be initiated before a Magistrate within whose jurisdiction the husband, father or son, as the case may be, who is liable to maintain, resides or before a Magistrate within whose jurisdiction the wife or the other beneficiary resides or before the Magistrate within whose jurisdiction both the parties

together last resided. In this connection better it is to keep in view a decision of this Court in *Ananth Gopal Pai Vs. Gopal Narayan Pai*, wherein this Court has observed construing Section 126 of the Code that under that provision the father, mother or the illegitimate child, can also, as the wife can do apply for maintenance u/s 125 in that Court of the Magistrate within whose jurisdiction any of them reside. If a Magistrate awarding maintenance can also enforce his order as provided in sub-section (3) of Section 125, that Magistrate, it is clear from Section 126, need not only be the one within whose jurisdiction the party against whom that order is made resides. It can even be the other two categories of Courts referred to in Section 126. Those Courts can enforce their orders against the party, who has been directed to pay maintenance wherever he may be living within the Country. The person against whom the order is made may change his residence and live elsewhere in the Country for various reasons. Wherever he may be he would be liable to pay the maintenance awarded so long as that order remains in force. The levy warrant issued by the Court for recovery of arrears can be enforced at the place where he resides. Subsequent to the obtaining of the order the beneficiary also may migrate from the place where he or she had resided when the order was made to any other place in the Country. It will be open to this party to seek the aid of that Court within whose jurisdiction he or she resides to enforce the order obtained. The levy warrant issued by that Court can be enforced in any place in this Country where the person against whom the order is made resides. It is this principle that is embedded in Section 128 of the Code.

6. The interpretation we put upon Section 128 will have to be in consonance with the spirit or the principles under-lying the two other connected provisions [Section 125(3) and Section 126] referred to above. Section 126(1) which corresponds to Section 488(8) of the old Code has enlarged the venue of proceedings u/s 125 by enabling the applicants to choose the Court within whose jurisdiction they may reside unlike in the old Code in which they could have approached only that Court within whose jurisdiction the husband used to be or used to reside. Now Section 126(1) enables in addition also the Magistrate within whose jurisdiction lives the beneficiary. "Any Magistrate" referred to in the 2nd part of Section 128 of the Code means any Magistrate in the Country within whose jurisdiction the applicant or the opponent resides (at the relevant time). Such a Magistrate may enforce the order against the opponent at the place where the opponent resides. The words "by any Magistrate" are not controlled by the following words "in any place where the person against whom it is made may be", nor does the latter sentence qualify the former one. These words only make it amply clear the power of the executing Court in reaching the person against whom the levy warrant may be issued. It reaches wherever he resides in this Country, even beyond the territorial jurisdiction of the Court issuing it. However, before issuing the warrant such a Court will have to be satisfied about two things, namely, the identity of the parties and the amount due.

7. In the circumstances, as already stated, there is no merit in the first ground.

It is the contention of the Learned Counsel for the petitioner that prior to the issue of this levy warrant, the learned Magistrate has not heard him or issued any notice to him. If that is so, the learned Magistrate will have to pass an appropriate fresh order after hearing him. To enable him to do so, the following order is made.

(i) The levy warrant now issued by the learned Magistrate is hereby quashed.

(ii) The matter involved is remitted to him with a direction to hear both sides in the matter of arrears due and thereupon to pass an appropriate order in the matter.