(2014) 12 J&K CK 0012

In the Jammu And Kashmir High Court

Case No : Pet. U/S 561-A No. 193/2014 and Cr. M.P. No. 390 Of 2013

Director General, J&K Funds Organization	APPELLANT
Vs	
Kulsuma Bano and Others	RESPONDENT

Date of Decision : 19-12-2014

Acts Referred:

Citation : (2014) 4 JKJ 35

Hon'ble Judges : Mohammad Yaqoob Mir, J

Bench : Single Bench

Advocate : T.H. Khawaja, Advocates for the Appellant; R.A. Gadda, Advocates for the Respondent

Judgement

Mohammad Yaqoob Mir, J.—Respondents No. 1 and 2, respectively wife and son of respondent No. 3, having been deserted, have

launched proceedings for grant of maintenance under Section 488 of the Code of Criminal Procedure which have been decided in their favour.

Respondent No. 3 having failed to deposit the amount of maintenance had fell in arrears of Rs. 28,000. In the execution proceedings when the

respondent No. 3 failed to respond and even his whereabouts could not be ascertained, the Court of Judicial Magistrate 1st Class, Pattan passed

order dated 14.08.2013 asking the petitioner to withdraw an amount of Rs. 28,000 from the GP Fund account of the respondent No. 3, employee

of the Public Health Engineering Department. The petitioner filed an application before the Magistrate seeking recall of the said order on the

ground that the GP fund Account is exempted from attachment in terms of Section 3 of the Provident Fund Act. Petitioner supported his

contention by relying on a judgment rendered by the Hon'ble Apex Court reported in Union of India (UOI) Vs. Jyoti Chit Fund and Finance and

Others, . However, the Magistrate rejected the application, while doing so appear to have been swayed by the sentiments beyond proportion so

as to negate the settled position of law. The Magistrate has transgressed in an unexpected manner. He has tried to legislate the law and has even

irrationally attempted to interpret the judgment of the Hon'ble Apex Court which is totally unwarranted. The Magistrate was required to exercise

restraint, which, perhaps to his imagination and understanding, has no meaning.

2. The Magistrate should have adhered to the prescribed mode and method for recovery of the arrears of maintenance.

3. Section 488(3) of Cr.P.C. provides for recovery of maintenance amount in the manner provided for levying fines. Section 386 of Cr.P.C.

provides the mode and method for recovery of the fines. Said Section provides following two modes:

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the Collector of the District authorizing him to release the amount by execution according to civil process against the movable

or immovable property, or both, of the defaulter;

Provided that, if the sentence directs that in default of payment of fine the offender shall be imprisoned, and if such offender has under gone the

whole of such imprisonment in default, no Court shall issue such warrant unless for special reasons to be recorded in writing it considers it

necessary to do so.

4. Learned Magistrate in his order has mentioned that as per report received from the Tehsildar, Pattan there is no kind of land recorded in the

name of respondent No. 3, furthermore, respondent No. 3 has avoided appearance. Records do not suggest that the Magistrate has issued any

warrant to the Collector authorizing him to realize the amount by execution according to civil process against the movable or immovable property

or both.

5. Respondent No. 3, admittedly, is a government employee. He cannot have wings to give slip to the law. It was for the Magistrate to have

recourse to all the relevant measures for ensuring realization of the amount of arrears which course is still open and can be resorted to. Learned

Magistrate has resorted to an unwarranted shortcut method by asking the petitioner to withdraw the amount of Rs. 28,000/- from the GP Fund

account of respondent No. 3 and to deposit the same in the Court which is impermissible in view of the clear wording employed in Section 3 of the

Provident Fund Act which reads as under:

3. Protection of compulsory deposits

(1) A compulsory deposit in any Government Provident Fund shall not in any way be capable of being assigned or charged and shall not be liable

to attachment under any decree or order of any Civil, Revenue or Criminal court in respect of any debt or liability incurred by the subscriber or

depositor, and neither the official assignee nor any receiver appointed under Order XXI-A of the Code of Civil Procedure, 1977, shall be entitled

to, or have any claim on any such compulsory deposit.

(2) Any sum standing to the credit of any subscriber to, or depositor in, any such fund at the time of his decease and payable under the rules of the

fund to any dependent of the subscriber or depositor, or to such person as may be authorized by law to receive payment on his behalf, shall,

subject to any deduction authorized by this Act and, save where the dependent is the widow or child of the subscriber or depositor, subject also to

the right of an assignee under an assignment made before the commencement of this Act, vest in the dependent, and shall, subject as aforesaid, be

free from any debt or other liability incurred by the dependent before the death of the subscriber or depositor.

6. Hon'ble Apex Court in the judgment reported in Union of India (UOI) Vs. Jyoti Chit Fund and Finance and Others, has laid down a principle to

the effect that so long as the amount of provident fund, pensions and other compulsory deposits are actually paid to the government servant who

disentitled to it on retirement or otherwise, same is exempted from the attachment. Such Provident Fund amounts, pension and other compulsory

deposits until it reach the hands of the employee are exempted from attachment. This principle should have been strictly followed which

unfortunately learned Magistrate in the fit of sentiments has not followed.

7. An objection was raised by the counsel for respondents No. 1 and 2 that the petitioner has no locus to intervene but same position is settled by

the Hon'ble Apex Court in the aforesaid judgment. The petitioner-Director General, J & K Fund Organization, Srinagar, is the trustee of provident fund sums. In this connection, it shall be quite relevant to quote paras 11 and 12 of the judgment rendered by the Hon'ble Apex Court in the case

of Union of India (UOI) Vs. Jyoti Chit Fund and Finance and Others, :

11. We may state without fear of contradiction that provident fund amounts, pensions and other compulsory deposits covered by the provisions

we have referred to retain their character until they reach the hands of the employee. The reality of the protection is reduced to illusory formality if

we accept the interpretation sought. We take a contrary view which means that attachment is possible and lawful only after such amounts are

received by the employee. If doubts may possibly be entertain on this question, the decision in Union of India (UOI) Vs. Radha Kissen Agarwalla

and Another, erases them. Indeed, our case is a fortiori one, on the facts. A bare reading of Radha Kissen makes the proposition fool-proof that

so long as the amounts are Provident Fund dues then, till they are actually paid to the government servant who is entitled to it on retirement or

otherwise, the nature of the dues is not altered. What is more, that case is also authority for the benignant view that the government is a trustee for

those sums and has an interest in maintaining the objection in court to attachment. We follow that ruling and overrule the contention.

12. It is possible to take a broad view that cases where public policy is involved and the court has a certain duty to observe statutory prohibitions,

a wider concept of locus standi has to be taken. Any public authority interested in the matter and not, behaving partially as an officious busybody

may bring to the notice of the court the illegality of the steps it proposes to take. When the court's jurisdiction is so invoked, it may be exercised

without insisting on some other directly affected partly, like the judgment-debtor in the instant case, appearing to defend himself"".

8. For the stated reasons and while applying the law as has been laid down by the Hon'ble Apex Court, the only safe conclusion deducible is that

the learned Magistrate has in an arbitrary manner, in the fit of sentiment, illegally rejected the application of the petitioner thus has passed the order

impugned dated 14.08.2013 which is totally unsustainable in the eyes of law, as such, quashed.

9. It is left open to the Court of ld. Magistrate, Pattan to proceed with the execution proceedings in accordance with the mode and method as

prescribed under Section 488(3) read with Section 386 of the Code of Criminal Procedure.

10. Copy of the judgment be sent to the learned Magistrate who has passed the order impugned for information and copy be also sent to the court

of Judicial Magistrate 1st Class (Sub Judge), Pattan for information and follow up. Petition succeeds, as above so shall stand disposed of along

with connected Cr. MP.

