

**(2000) 03 KAR CK 0094**

**In the Karnataka High Court**

**Case No : Civil Revision Petition No. 983 of 2000**

H.C. Mohan

APPELLANT

Vs

Smt. Sulochana

RESPONDENT

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**Date of Decision : 22-03-2000**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 37, 51  
Constitution of India, 1950 — Article 21  
Criminal Procedure Code, 1973 (CrPC) — Section 488

**Citation :** (2001) CriLJ 1816 : (2001) 1 DMC 242 : (2000) ILR (Kar) 2488 :  
(2000) 6 KarLJ 141 : (2000) 4 KCCR 239 SN

**Hon'ble Judges :** K. Sreedhar Rao, J

**Bench :** Single Bench

**Advocate :** Sri K.G. Krishnamurthy, for the Appellant;

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## **Judgement**

1. This revision is filed against the order of the Civil Judge (Senior Division), Shimoga, in Exn. No. 256 of 1998.

2. The revision petitioner is the judgment-debtor against whom execution proceedings were instituted for recovery of maintenance amount granted to the decree-holder who is his wife, in M.C. No. 12 of 1991 filed for restitution of conjugal rights, inter alia seeking alimony of Rs. 600/-p.m. which was ordered by the Court below. The arrears of alimony of Rs. 23,735/- remains unpaid. Therefore, the execution petition was filed.

3. From the order sheet, it discloses that notice was ordered on the judgment-debtor both through Court and by registered post, but the same was not served. Consequently, an arrest warrant came to be issued. In the meantime, the judgment-debtor made appearance and filed objections to the execution petition contending that the decree is inexecutable as he has "no means to pay" and that he has no source of income to make payment of the decretal amount.

4. The Trial Court, after considering the objections filed, passed the order on 5-2-2000 holding that "the defence of no means to pay is not a valid defence for

avoiding the liability under the decree" (the absence of word "not" underlined in the original order appears to be an accidental omission) and held that it is not necessary to record any evidence and therefore, the arrest warrant was issued to the judgment-debtor. Being aggrieved by the said order, the Revision is filed.

5. The learned Counsel for the revision petitioner relied on a decision of the Supreme Court in the case of Jolly George Varghese and Another v Bank of Cochin, wherein it has been held thus:

"The words "or has had since the date of the decree, the means to pay the amount of the decree" occurring in Section 51 of the CPC may imply, if superficially read, that if at any time after the passing of an old decree the judgment-debtor had come by some resources and had not discharged the decree, he could be detained in prison even though at that later point of time, he was found to be penniless. This is not a sound position apart from being inhuman going by the standards of Article 11 of International Covenant on Civil and Political Rights and Article 21 of the Constitution.

Where the judgment-debtor if once had the means to pay the debt but subsequently after the date of decree, has no such means or he has money on which there are other pressing claims, it is violative of Article 11 of the Covenant to arrest and confine him in jail so as to coerce him into payment. Section 51 of the CPC embodies the same principle as that which is embodied in Article 11 of the Covenant.

The Covenant bans imprisonment merely for not discharging the decree debt. Unless there be some other vice or mens rea apart from failure to foot the decree, international law frowns on holding the debtor's person in civil prison, as hostage by the Court.

The simple default to discharge the decree, is not enough. There must be some element of bad faith beyond mere indifference to pay, some deliberate or recalcitrant disposition in the past or alternatively, current means to pay the decree or a substantial part of it. The provision emphasises the need to establish not mere omission to pay but the attitude of refusal as demand verging on dishonest disowning of the obligation under the decree. Here considerations of the debtor's other pressing needs and straightened circumstances will play prominently.

It is too obvious to need elaboration that to cast a person in prison because of his poverty and consequent inability to meet his contractual liability is appalling. To be poor in this land of poverty is no crime and recovery debts by the procedure of putting one in prison is too flagrantly violative of Article 21 of the Constitution unless there is some proof of minimal fairness of his wilful failure to pay in spite of his sufficient means and absence of more terribly pressing claims on his means such as medical bills to treat cancer or other grave illness. Unreasonableness and unfairness in such a procedure is inferable from Article 11 of the Covenant and a lethal blow of Article 21 of the Constitution cannot strike down the provision of Section 51 of the Civil Procedure Code".

Placing reliance on the said decision, it was strenuously contended by the learned Counsel that the plea of "no means to pay" is a valid and substantial ground which warrants enquiry into the matter, and the view of the Trial Court that there is no necessity to record any evidence in the matter is illegal.

6. The learned Counsel referred to the decision of this Court in the case of Sri Rama Chandra v B.C. Devaiah, where it has been held thus:

"As long as there is no dishonesty and mala fides on the part of the judgment-debtor to discharge his obligation, committing him to civil prison would amount to violation of Article 11 of International Covenant on Civil and Political Rights and Article 21 of the Constitution. The property of the judgment-debtor already been attached and ordered to be sold but not sold as long as property in the name of judgment-debtor, he cannot say that he has no means order passed cannot be set aside".

7. The learned Counsel referred to another ruling of this Court in Civil Law Times 1999 page 546, wherein it has been held thus:

"Arrest without issuing show-cause notice is violative of Article 21 and without jurisdiction".

After going through the decision in Civil Law Times 1999 page 546, it appears that the ratio has no application to the facts of the case. In the instant case, the judgment-debtor voluntarily appeared and filed objections and after due notice and hearing, the impugned order came to be passed, unlike in the decision cited.

8. The learned Counsel for the revision petitioner has relied on a ruling of this Court in the case of Ganapathy, MM. v Mis. The New Premier Chemical Industries (Private) Limited, wherein it has been held thus:

"Before ordering issue of arrest warrant, it is desirable to hold an enquiry as to whether the judgment-debtor has means to pay the decretal amount or he is wilfully avoiding to pay the same. If a person is ordered to be arrested without holding an enquiry as contemplated by Section 51 read with Order 21, Rule 37, the very object of the said provisions is likely to be frustrated. If the judgment-debtor really had no means to pay the decretal amount and if he is brought under arrest and if the enquiry is held about his paying capacity thereafter, the mischief would have already been done. In order to avoid this mischief, an enquiry is contemplated".

After considering the objections, it has been held that no further enquiry in the matter is necessary as the plea of "no means to pay raised by the judgment-debtor is not a valid defence and therefore, issued arrest warrant.

9. The ruling of the Supreme Court cited at the Bar requires meticulous consideration to find out its application to the facts of the case. In the ruling of the Supreme Court applying Article 11 of the International Covenant on Civil and Political Rights and interpreting the same in the light of Article 21 of the

Constitution of India, the scope and purport of the provisions of Section 51 of the CPC has been interpreted. It has been held that "means to pay", "current means to pay" and the element of bad faith in avoiding the liability has to be taken note of before a person is ordered to be imprisoned for non-discharge of a contractual debt liability.

10. In the present case, the liability of the revision petition arises out of matrimonial obligation and it is not out of any contractual liability. Although maintenance alimony granted is required to be recovered as per the procedure envisaged for debts, however, the said ratio cannot be applied to absolve a person from the obligation to maintain his wife. The obligation to maintain the wife and other relatives under the personal law applicable to Hindus strictly imposes an obligation that whether a person possesses property or not, he is obliged to maintain his wife as envisaged in law. In the ruling in the case of Sri Raja Bommadevara Raja Lakshmi Devi Amma Gam v Sri Raja B. Naganna Naidu Bahadur Zarnindar Garu and Another , it has been held thus:

"The obligation of a husband to maintain his wife is one arising out of the status of marriage. It is liability created by Hindu Law in respect of jural relations of a Hindu family. When there is no contract between the parties to a marriage, as among Hindu, a suit for maintenance is not a suit based upon contract, but it is a suit arising out of a civil relation resembling that of a contract which is specially provided for in Article 128 of the Limitation Act".

The ruling of the Orissa High Court in Basanta Kumari Mohanty Vs. Sarat Kumar Mohanty, is extracted hereunder for convenient reference:

"Sri Bidhayak Patnaik, learned Counsel appearing for the petitioner, submitted that the learned Magistrate did not keep the law in view while disposing of the application of the petitioner and drew my attention to the case of Sri Raja Bommadevara, supra, where their Lordships held:

"The obligation of a husband to maintain his wife is one arising out of status of marriage. It is a liability created by Hindu Law, in respect of the jural relations of a Hindu family. . . .".

and to Article 554 of Mulla's Hindu Law (14th Edition)-

"A wife is entitled to be maintained by her husband, whether he possesses property or not. ....".

Manu, as cited in Mitakshara, has enjoined:

"The aged parents, a virtuous wife and an infant child must be maintained even by doing a hundred misdeeds".

The obligation to support the wife is personal obligation attaching from the moment of marriage. It is independent of possession of property.

No doubt an order u/s 125 can be passed only if a person having sufficient

means neglects or refuses to maintain his wife, child, parents, etc. It is however, well-settled that the expression "means" occurring in Section 125 does not signify only visible means, such as, real property or definite employment and if a man is healthy and able-bodied, he must be held to be possessed of means to support his wife, child, etc. The Courts have gone to the extent of laying down that the husband may be insolvent or a professional beggar or a minor or a monk, but he must support his wife so long as he is able-bodied and can eke out his livelihood"... .

A reading of the decision, wherein, several authorities on the proposition relating to obligation of the husband to maintain his wife has been copiously referred to, as laid down under the Hindu Law. The parties in the present case also being Hindus, the law laid down squarely applies to the case.

11. In the decision of the Delhi High Court in the case of Chander Parkash Bodh Raj v Smt. Shaila Rani Chander Parkash , it has been held that:

"an able-bodied young man has to be presumed to be capable of earning sufficient money so as to be reasonable to maintain his wife and child, and that he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to family standards. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court, the exact amount of his income, the presumption will be easily permissible against him".

Although the ruling is rendered u/s 488 of the Criminal Procedure Code (now correcting to Section 125 of the Criminal Procedure Code) the law laid down equally apply to the obligation of maintenance under Hindu Law.

12. After going through the decisions referred to above, it becomes clear that obligation of the husband to maintain his wife stems out of the obligation cast under personal law arising out of marital status and not under any contractual obligation. Therefore, I am of the view that the ruling of the Supreme Court cited at the Bar does not apply to the facts of the case to absolve the revision petitioner from providing maintenance to his wife, and the plea of "no means to pay" has to be rejected at the very threshold. The question of granting any opportunity for leading evidence to establish "no means to pay" also does not arise.

13. Although the Trial Court has not supported its order by detailed reasons, in view of the reasons and the discussion made above, the revision lacks merit and the revision is dismissed.