

(1989) 04 MAD CK 0033
In the Madras High Court
Case No : Criminal R.C. No. 226 of 1987

Shanmugham

APPELLANT

Vs

Andal and Shanthi represented by her mother and natural guardian

RESPONDENT

Date of Decision : 11-04-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (1989) LW(Cri) 513

Hon'ble Judges : Arunachalam, J

Bench : Single Bench

Advocate : R. Balasubramanian, for the Appellant; Chitra Sampath, for the Respondent

Final Decision : Dismissed

Judgement

Arunachalam, J.—The Petitioner is the husband of the first Respondent and the father of the second Respondent. The Respondents filed

M.C 35/83 on the file of the Judicial First Class Magistrate, Cuddalore against the Respondent u/s 125, CrI.P.C., claiming maintenance. After an

elaborate enquiry the trial Magistrate directed the Petitioner herein to pay per month Rs. 100/- to each one of the Respondents. This order was

pronounced on 11-8-1986 and the awarded maintenance was payable from the date of application, which was 24-9-1983. The Respondents filed

CrI.M.P. No. 1154 of 1986 on the file of the Judicial Second class Magistrate, Vridhachalam on 20-10-1986 u/s 128, CrI.P.C., for enforcement

of the order of maintainance. In the said petition the claim has been made for the period commencing from 24-9-1983 and ending with 23-9-1986.

The claim, therefore, is for 36 months at the rate of Rs. 200/- per month

totalling in all Rs. 7,200/-. The Petitioner herein filed CrI.M.P. No. 1970 of 1986 in CrI.R.C. No. 64 of 1986 on the file of the Court of Session, South Arcot at Cuddalore for stay of operation of the order of maintenance made by the trial court. On 11-11-1986 the revisional Court had passed a conditional order of stay in the event of his depositing half the amount of maintenance due before a fixed date in December, 1986. Since the said order was not complied with, the order was vacated on 22-12-1986.

2. After the disposal of the stay petition, Cr.M.P. No. 1154 of 1986 was taken up for disposal. The Petitioner, who was served with a copy of this petition, had made an endorsement that he is neither possessed of movable nor immovable property and hence he would be unable to pay the maintenance awarded to the Respondents. He has also stated in the endorsement that the Court could take further proceedings. It is only thereafter that the trial Magistrate passed an order on 26-2-1987 directing attachment of the salary of the Petitioner every month at the rate of Rs. 300 per month for 24 months commencing from February, 1987. It was also further directed that every month on or before 5th the attached salary must be deposited in Court.

3. It is this order of attachment of the salary, which is sought to be challenged by the Petitioner in this revision. The grounds of challenge are:

(a) The impugned order offend principles of natural justice since no opportunity had been given to the Petitioner to defend himself;

(b) The order is liable to be set aside since no application for issue of a warrant shall be made for the amounts due for a period of more than 12

months immediately preceding the presentation of the petition as contemplated under the first proviso to Section 125(3), Code of Criminal

Procedure ;

(c) The procedure prescribed u/s 421, CrI.P.C., for the issue of warrant for the levy of fine had not been followed in this case. As a corollary it is

stated in the grounds that only Section 421(1)(b) will be attracted and the sole course that was open was to issue a warrant to the Collector of the

District authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both of the defaulter.

4. At the time when this revision was admitted, in CrI M.P. No. 3738 of 1987 on

27-4-1987 this Court passed a conditional order of stay on the

Petitioner depositing before the trial court Rs. 1,000 on or before 1-6-1987 and thereafter continuing to pay through Court towards maintenance

to the Respondents at the rate of Rs. 100/- per month on or before the 5th of every succeeding English Calendar month. It appears that a sum of

Rs. 1,000/- was deposited in the trial Court which was permitted to be withdrawn, but, there is no material to show as to whether the Petitioner

continued to deposit Rs. 100/- every month as ordered by this Court.

5. Mr. R. Balasubramanian, learned Counsel for the Petitioner, while reiterating the grounds taken in the memorandum, would place before me

certain authorities which support his contention and some others which take a contrary view. He has taken me through Section 421, CrI.P.C., and

R.288 of the Criminal Rules of Practice, relating to issue of warrants.

6. Mrs. Chitra Sampath, learned Counsel for the Respondents who countered the arguments of the learned Counsel for the Petitioner, has

contended that the issue involved must be decided on the basis of the provision being a social legislation intended to prevent vagrancy of derelicted

wives and children. She has also taken me through the relevant provisions in the Code of Criminal Procedure and the Rules of Practice.

7. Let me now consider the rival contentions put forth by either counsel. S. 125(3), Cr.P C., provides for issuing a warrant for levying the amount

of maintenance due, in the manner provided for levying fines, when a person ordered to pay maintenance fails without sufficient cause to comply

with the order. The procedure for levying fines forms part of Section 421, Code of Criminal Procedure Section 421, CrI.P.C., reads as under:

Warrant for Levy of Fine ½(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 ½

(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, authorising him to realise the amount as arrears of land revenue from the movable or immovable

property, or both, of the defaulter;

Provided that, if the sentence directs that in default of payment of the fine, the

offender shall be imprisoned, and if such offender has undergone 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 so to do, or unless it has made an order for the payment of expenses or compensation out of the fine u/s 357"

(2) The State Government may make rules regulating the manner in which warrants under Clause (a) of Sub-section (1) are to be executed, and

for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such

warrant.

(3) Where the Court issues a warrant to the Collector under Clause (b) of Sub-section (1), the Collector shall realise the amount in accordance

with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law ;

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

R.298 of the Criminal Rules of Practice provides for the warrant being directed to a police officer in the proper form referred to in Schedule v. of

the Code. This rule refers to Section 88, Sub-clause (3) of the old Code of Criminal Procedure, which corresponds to S 83(3) of the present

Code. u/s 83(3) of the Code of Criminal Procedure, if the property ordered to be attached is a debt or other movable property, the attachment

under this section shall be made either by seizure or by an order in writing prohibiting the delivery of such property or by the other methods

contemplated therein. The High Courts of Rajasthan, Calcutta, Goa and Rangoon have taken the view that attachment of future salary will not be

possible under the provisions of Section 386(1)(a) of the old Code of Criminal Procedure corresponding to Section 421 of the present Code. It

was the view of those Courts that only civil process would be feasible u/s 386(1) (b) of the old Code, which corresponds to Section 421 (1)(b) of

the new Code. However, the High Courts of Andhra Pradesh and Karnataka have definitely enunciated that the salary can be attached and there

can be no impediment in doing so under the provisions of Section 421 (1)(a) of the new Code.

8. Before we enter into this controversy, there can be no difficulty in holding that

the salary would be property within the meaning of Section 421,

Crl P.C. Reference could be made to R.K. Dalmia Vs. Delhi Administration, ., Manchershia Ardeshir Devierwala Vs. Ismail Ibrahim Patel and

Others, . and In Re: Yerasuri Lakshminarayana Murthy, on this aspect of the case.

9. The Supreme Court in Captain Ramesh Chander Kaushal Vs. Mrs. Veena Kaushal and Others, speaking through V.R. Krishna Aiyar, J., has

observed that""S.125, Crl.P.C., 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. There is no doubt that sections of statutes 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 packing out that

interpretation out of two alternatives which advance the cause-the cause of the derelicts.

10. Keeping this observation in view the scope of attachment of salary in execution of a maintenance order will have to be considered. In Baldevi

Vs. Ramnath, . a Division Bench of the Rajasthan High Court held that movable property in Cl.(a) of Section 386(1), Crl.P.C., (new Section

421(1)(a), Crl.P.C.), refers to tangible movable property which can be seized and it must be belonging to the offender. If it was movable property

of other description, the remedy was, under Cl.(b), by civil process. There was a difference in the meaning of the words "movable property" in

Cls. (a) and (b), and, therefore, the wife cannot ask for attachment of the future salary of her husband as and when it becomes due, for, it was

neither tangible corporeal property or belonging to the husband, who had not yet earned the future salary. The same view was taken by the

Rangoon High Court in AIR 1934 82 (Rangoon) , wherein it has been observed that the expression "movable property as used in Section 386 of

the old Code did not include salary not yet drawn by a salary earner and, therefore, an order directing issue of a warrant of attachment of a

person's salary was irregular. The Calcutta High Court in Rajendra Nath Ghose Vs. Brojabala Ghose, held that the proper procedure for

enforcement of a maintenance order where the salary of the defaulting husband

had to be attached, the provisions of Section 386(1)(b) of the old

Code had to be followed. In that view it held that an order directing the manager of a company in which the husband was employed to attach a

definite sum of money out of the husband's salary and directing its payment to the wife was illegal. J.C.'s Court of Goa, Daman and Diu 11n Ali

khan v. Smt. Hajrambi and Anr. 1981Cri. L.J. 682. followed the view of the Rajasthan High Court and held that issuance of a warrant of

attachment of future salary for the recovery of arrears of maintenance was not permissible and the proper procedure was to seek recourse to

Section 421(1)(b) of the Code. A similar view was expressed in Renuka Paul Vs. Dharendra Nath Paul, , by the Calcutta High Court. In the State

of Mysore v. Duraiswamy and Ors. 1964 M.L.J. (Cri.) 699. the Karnataka High Court held that attachment of salary not accrued to a

Government servant, in enforcement of an order of maintenance against him was illegal and cannot be supported. This pronouncement refers to

Rajendra Nath Ghose Vs. Brojabala Ghose, . and Baldevi Vs. Ramnath, However the present view of the Karnataka High Court, is apparently

different.

11. Now, turning to the view that the salary could be attached, reference can be made to the decision of the Andhra Pradesh High Court in Ahmed

Pasha Vs. Wajid Unissa and Others, wherein it has been held that recovery of arrears of maintenance by issue of warrant for attachment of salary

was permissible u/s 421, Code of Criminal Procedure. There is definite observation ""the view that future salary of the husband cannot be attached

because the future salary is not available for seizure and did not belong to the husband since he cannot be said to have earned his future salary is

unsustainable. When a moneylender or a Bank has got the right u/s 60 C.P.C., 1908, to attach the salary of an official to the extent indicated

therein in execution of a money decree or maintenance decree it is preposterous to say that a wife cannot seek for attachment of her husband's

salary for recovering the arrears of maintenance granted by the Magistrate u/s 125(3) of the Code"". The same view was reiterated by the Andhra

Pradesh High Court in In Re: Yerasuri Lakshminarayana Murthy, , by holding that Section 125 is designed to provide maintenance to the wife,

who is unable to support herself, and, therefore, it was imperative on the part of

the person against whom the order for payment is passed to comply with it. Movable Property" must be given a wide interpretation and "salary" cannot be excluded from this category. The Karnataka High Court in *K.V. Rudraiah v. Smt. B.S. MuddaGangamma* 1985 Cri, L.J, 707. has held that the contention that u/s 421(1)(a), CrI.P.C, only tangible and corporeal property could be attached by issue of a warrant and that salary payable in future, not being such property could not be attached had to be rejected. It was further observed that salary was also movable property and the warrant would become effective on, the salary becoming due and payable. This decision has taken note of the Division Bench dicta of this Court in *Pichu Vadhiar*'s case reported in *Pichu Vadhiyar v. The Secretary of State for India in Council* 18 Cri.L.J. 426. At this stage it will be useful to refer to the observation of the Division Bench of this Court in *Pichu Vadhiar v. The Secretary of State for India in Council* and *Another* 18 Cri. L.J. 426. wherein while interpreting Section 386 of the Code of Criminal Procedure, the following observations have been made:

This position receives support from S. 60 of the Code of CPC which includes money among properties which can be attached.

I do not understand the provision u/s 386 Cr. P.C., as compelling the distrainor to bring the movable property to sale. There may be cases in which the object can be gained by distress alone. There may also be cases in which the object can be obtained only by a distress as well as by sale.

But, apart from it, if there is tangible property, which is capable of being physically seized, I fail to see how Section 386, CrI. P.C., can be evaded by stating that as the distressed property is not ordinarily liable to be sold, there cannot be distraint.

Therefore, it is obvious that by recourse to Section 421, Cr.P.C., there need not be always distraint and sale as sought to be put forth by the learned Counsel for the Petitioner for, according to him, if there cannot be a sale of the salary there cannot be distraint of it. since distraint alone without a sale will also be feasible under the said provision. In this context, reference to R.298(2-A), CrI.P.C., may be useful, for, attachment or sale of the articles referred to have been contemplated. Further, Section 83(3),

Crl P.C. not only permits seizure but permits an order in writing prohibiting the delivery of property to any person.

12. On the totality of the legal provisions taken in conjunction with the social purpose behind S. 125, CrI.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 Vs. Wajid Unissa and

Others, In Re: Yerasuri Lakshminarayana Murthy, and K.V. Rudraiah v. Smt. B.S. MuddaGangamma 1985 Cri. L.I (sic). 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

legislation.

13. The reference made to the forms provided under the Schedule may not assume importance since Form No. 19, which is applicable to a

warrant to enforce u/s 125, Cr.P C., fits in with Form No. 43 contemplated u/s 421, Code of Criminal Procedure I therefore hold that the salary

inclusive of the future salary of the husband can be attached in the manner provided u/s 421(1) (a), CrI. P.C., and the "salary" will fall within the

concept of "movable property".

14. 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), CrI. P C. 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-S.(1) of Section 125, CrI. 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 A reference at this stage can be

usefully made to S. 125(2), Crl. P.C., which lays down that such allowance shall be payable from the date of the order, or if so ordered from the date of the application for maintenance. It is, therefore, manifest that the amount could have become due only from the date of the order which is 11-8-1986. It cannot be the intention of the legislature that the amount of maintenance would become barred by limitation simply because the order contemplated u/s 125 (1) Cr. P C., had been passed more than a year after the date of the original application. The maintenance became due, although with effect from a back date only when the order was passed on. 11-8-1986. Computing the period of one year from 11-8-1986, the application made by the Respondents is well within time and the recovery claimed was absolutely enforceable. The words in the proviso "from the date on which it became due" should be interpreted to mean "from the date on which the wife could successfully make an application i.e , from the date when the Court holds that she is entitled to maintenance, on the facts of this case". Even this ground of attack of " limitation bar"" does not enure in favour of the Petitioner.

15. I am unable to agree: with the submission of the learned Counsel for the Petitioner that there has been a violation of the principles of natural justice since the Petitioner has been served with a copy of the petition for enforcement of maintenance and he has made an enforcement that he has neither movable nor immovable property and that the Court could, therefore, take suitable action.

16. For the aforesaid reasons the Criminal Revision fails and is dismissed.