(1998) 09 KAR CK 0018

In the Karnataka High Court

Case No : Criminal Petition No. 1457 of 1995

The Regional Provident Fund Commissioner, Bangalore — APPELLANT

Vs

Smt. Puttamma and Another — RESPONDENT

Date of Decision : 08-09-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 482
Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 10, 10 (1)

Citation : (1999) 1 ALD(Cri) 116 : (1999) 1 ALT(Cri) 334 : (1999) 1 CivCC 285 : (1998) 6 KarLJ 354 : (1999) 1 LLJ 377

Hon'ble Judges : M.P. Chinnappa, J

Bench : Single Bench

Advocate : Sri Harikrishna S. Holla, for the Appellant; Sri M.M. Swamy, for the Respondent

Judgement

1. This petition is filed u/s 482, Criminal Procedure Code by the Regional Provident Fund Commissioner for questioning the order passed by the learned Magistrate dated 13-6-1991, the operative portion of which reads as follows:

"The provident fund amount of the respondent to the extent of the arrears of maintenance due in this proceedings in hereby attached. Issue attachment warrant to the Provident Fund Disbursing Officer as shown in the Process Fee memo returnable by 31-7-1992".

2. The brief facts of the case are the respondents made an application before the Court below to attach the provident fund amount due and payable to respondents 1, 1(a) to (f) against the provident fund amount contributed by the 2nd respondent by attaching the same to recover the arrears of maintenance awarded u/s 125, Criminal Procedure Code. The learned Magistrate has passed a considered order holding that there is no prohibition to attach the provident fund amount payable to the respondent towards maintenance awarded in favour of the complainants u/s 125, Criminal Procedure Code.

3. The learned Counsel for the petitioner submitted that though there is no prohibition u/s 125, Criminal Procedure Code, the very attachment of the Provident Fund amount consists of a clear bar u/s 10 of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (for short ''the Act''), which reads as follows:

"The amount standing to the credit of any member in the Fund (or of any exempted employee in a 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 Court in respect of any debt or liability incurred by the member [or the exempted employee], and neither the official assignee appointed under the Presidency Towns Insolvency Act, 1909 (3 of 1909) nor any receiver appointed under the Provincial Insolvency Act, 1920 (5 of 1920), shall be entitled to or have any claim on, any such amount".

From the reading of sub-section (1) of Section 10 it is clear that the Provident Fund amount is not liable to attachment under any decree or order of any Court in respect of debt or liability incurred by the debtor. Therefore, the order passed by the learned Magistrate attaching the amount held in the provident fund is contrary to the provisions of law.

4. But in this case, the learned Counsel for the petitioner, submitted that in view of the order which came to be passed, the amount was deposited in the Court and the 2nd respondent had retired by then. Such being the case, after the 2nd respondent had taken voluntary retirement, the amount becomes payable to him. Therefore, the amount which is deposited in the Court in compliance with the order of the Court shall be paid to the respondents 1, 1(a) to (f) according to the order passed by the Court. Further, this order shall not be taken as a precedent in any case. However, the Court shall not issue any further FLW in respect of the amount, if any, available on the PF contribution in respect of the 2nd respondent for claim of any maintenance.

