

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.12.2022

PRONOUNCED ON : 23.12.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNAM

Crl.R.C.No.1501 of 2022

P. Amutha

... Petitioner

Vs.

Gunsekarani

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 397 r/w.401 of Cr.P.C. to set-aside the order dated 09.09.2021 made in Crl.M.P.No.1780 of 2020 in M.C.No.7 of 1990 on the file of the Judicial Magistrate-1 at Tambaram.

For Petitioner : Mrs.M.S.Rajeswari

For Respondent : Mr.V. Gabriel

ORDER

Challenging the order of dismissal passed by the learned Judicial Magistrate-I, Tambaram in CMP No.1780 of 2020 in M.C.No.7 of 1990, dated 09.09.2021, the present Criminal Revision has been filed.

2. The fact of the case is that the petitioner is the wife of the respondent. She filed a maintenance case in M.C.No.7 of 1990 on the file of the Judicial Magistrate No.I, Tambaram, in which maintenance of Rs.500/- was ordered. Subsequently, it was enhanced to Rs.4000/- from 11.01.2013. The respondent/husband has not paid the maintenance regularly and there is arrears of Rs.1,19,000/-. Now, the respondent/husband, who was working as Barber in Indian Military, was retired from the service in the year 2019 and he is receiving pension. Under these circumstances, the petitioner/wife filed a petition for attachment of pension for arrears of maintenance and for future maintenance, which was dismissed by the Judicial Magistrate No.I, Tambaram on the ground that there is a bar under Section 60(1)(g) of the Civil Procedure Code. Hence, the present revision has been filed.

3. The learned counsel for the petitioner submitted that the learned

Magistrate dismissed the petition for attachment of pension by relying upon the Section 60(1)(g) of Civil Procedure Code, which is unsustainable. The bar under Section 60(1)(g) is not applicable to the case of maintenance. To support his argument, he relied upon the judgment of the Bombay High Court in **2019 NearLaw(Bombay HC Nagpur) Online 443 (Bhagwant /vs/ Radhika)**. He further submitted that the maintenance allowance granted to the wife cannot be considered as a debt. Therefore, exemption under Section 11 of the Pension Act 1871 for attachment is also not attracted with regard to the maintenance allowance. Under these circumstances, the dismissal of the trial Court is unsustainable and pleaded to allow the Criminal Revision Petition.

4. The learned counsel appearing for the respondent supported the order of the Trial Court and submitted that the bar under Section 60(1)(g) of the Civil Procedure Code as well as Section 11 of the Pension Act 1871 are applicable to maintenance allowance also. Even in the judgment of the Bombay High Court, which is relied on by the learned counsel for the

petitioner, the Hon'ble Judge quashed the attachment of pension. Therefore, there is no reason to interfere with the finding of the Trial Court and thus, pleaded to dismiss the Criminal Revision.

5. I have considered the matter in the light of the submissions made by the learned counsel appearing on both sides.

6. It is not disputed that the petitioner is the wife and the respondent is her husband. She had filed a maintenance case in M.C.No.7 of 1990. Initially, maintenance of Rs.500/- was ordered. Subsequently, it was enhanced to Rs.4000/- from 11.01.2013 and there is arrears of maintenance allowance of Rs.1,19,000/- . The respondent/husband, who was working as a Barber, retired from the Indian Military Service in the year 2019 and now receiving pension.

7. Now, the issue for consideration is whether the maintenance allowance granted to the wife can be attached in view of Bar under Section 60(1)(g) of Civil Procedure Code and Section 11 of Pension Act 1871.

8. On consideration of the judgment of Bombay High Court, which is relied on by the learned counsel for the petitioner, in paragraph 4 of the said judgment, the Hon'ble Judge observed that the maintenance allowance granted to the wife cannot be considered as a debt and she is not a creditor. Hence, exemption under Section 11 cannot be granted to the husband. For better appreciation, it is reproduced as under :

" 4. Learned counsel shri P.K.Mishra for the applicant/husband pointed out section 11 of the Pensions Act, 1871 and submitted that pensions cannot be attached. The said Section 11 is reproduced herein below :

"11. Exemption of pension from attachment. No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance, and no money due or to become due on account of any such pension or allowance.

*Shall be liable to seizure, attachment or sequestration by process of any Court a(***) at the instance of a creditor, for, any demand against the petitioner, or in satisfaction of a decree or order of any such Court.*

*b(This Section applies a(***) also to pensions granted or continued, after the separation of Burma from India, by the Government of Burma.)*

(a) The words "in Part A States and Part C States"were omitted by S.2 A.L.O, 1956 (1111956).

(b) Inserted by A.O.,1937 (141937),

(c) That is, on or after 141937."

The above said Section shows that in civil disputes pensions cannot be attached at the instance of creditors. Commentary relied on by learned counsel for the applicant /husband at serial No.16 under head of attachment shows that, "maintenance allowance granted to wife cannot be considered as debt- She is not a creditor, hence exemption under S.11 cannot be granted to husband. (1985) 87 Punk LR 682 : (1985) 12 Cri LT 219 " . The said commentary itself shows that pensions can be attached to recover amount of maintenance. Hence, the stand taken by learned counsel for the applicant/husband that pensions cannot be attached is not digestible. "

9. Further , some issue has been considered by the **High Court of Gujarat at Ahmedabad in 'Ashokbhai Devsingbhai Chauhan /vs/ Taraben**

Ashokbhai Chauhan'. In that case, the Principal Family Court, Ahamedabad directed the Bank of Baroda, Science City Branch, to deduct Rs.30,000/- per month from the pension account of the husband and credit to the account of the wife towards the maintenance amount in arrears. After considering the judgments, viz., **(1) Om Prakash /vs/ Javitri Devi (Manu/PH/2052/2017 : 2018(1) DMC 462), (2) Vasanthi Devi /vs/ Vijaya Bank, Ashok Nagar Branch, Mangalore, (Manu/KE/0484/1997 : 1997(2) KarLJ 351, (3) Union of India /vs/ Wing Commander R.R.Hingorani (Retd.) (MANU/SC/0572/1987 : 1987 1 SCC 551)** and also considering the above said Bombay High Court judgment, finally, held Section 11 of Pension Act 1871 cannot be attracted and as a wife cannot be treated as creditor as provided under the Pension Act and upheld the order of attachment of pension passed by the Family Court for collection of pension amount.

10) Section 11 of the Pension Act 1871 is as follows :

"11. Exemption of Pension from Attachment - No pension granted or continued by Government on Political considerations or on account of past services

or present infirmities or as a compassionate allowance, and no money due or to become due on account of any such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any Court at the instance of a creditor, for any demand against the pensioner or in satisfaction of a decree or order of any such Court. "

11. The Hon'ble Judge of Bombay High Court, in paragraph 4 of its judgment, reproduced the commentaries with regard to the exemption of pension from attachment. In that commentaries, it is observed that the maintenance allowance granted to wife cannot be considered as a debt, she is not a creditor and hence, the exemption under Section 11 of the Act cannot be granted to husband, is a justifiable interpretation of Section 11 of the Pension Act 1871. That view is also accepted by the Hon'ble Judge of Gujarat High Court at Ahamedabad.

12. If the maintenance allowance is exempted under Section 11 of the Pension Act 1871, the consequence would affect the divorced women's

interest, for example, if a Government Servant's wife has got divorced during his service period and she was awarded maintenance by the Competent Court, her maintenance amount was recovered from the salary of her husband and after his retirement, he may get only pension. In such circumstances, if it is exempted from the attachment, the maintenance provided to the wife by statute and by order of Court Decree would become infructuous. Therefore, such interpretation will not advance justice and adversely, affect the measure of social justice to protect women.

13. The maintenance allowance granted to wife is a measure of social justice, specifically enacted to protect and inhibit neglect of the women. Further, it is aimed to prevent vagrancy and destitution in the light of the mischief to be avoided, the justice to be advanced.

14. Lawful claim due to a woman in distress should not be denied heartlessly and lawlessly.

15. The conscience of social justice, the cornerstone of our constitution will be protected. Therefore, I hold that the maintenance

allowance granted to wife cannot be considered as a debt and she is not a creditor. Hence, exemption under Section 11 of the Pension Act 1871 as well as the exemption provided in Section 60(1)(g) of Civil Procedure Code, cannot be granted to husband. Hence, the order passed by the learned Judicial Magistrate is unsustainable and it is liable to be set aside.

16. Accordingly, this Criminal Revision is allowed and the order passed by the Judicial Magistrate in Crl.M.P.No.1780 of 2020 in M.C.No.7 of 1990, dated 09.09.2021 is set-aside and the learned Judicial Magistrate is hereby directed to take appropriate action for collecting the arrears of maintenance from the pension of the respondent/husband by attachment.

23.12.2022

mrp

To

The Judicial Magistrate No.I,
Tambaram.

Crl.R.C.No.1501 of 2022
V.SIVAGNANAM, J.,

mrp

Pre-delivery order in
Crl.R.C.No.1501 of 2022

23.12.2022