

(2013) 10 MAD CK 0209

Madras High Court

Case No: Criminal Revision Case No. 1050 of 2009

Jayachandran

APPELLANT

Vs

Manjula

RESPONDENT

Date of Decision: Oct. 11, 2013**Citation:** (2014) 1 LW(Cri) 224 : (2014) 1 MLJ(Cri) 448**Hon'ble Judges:** K.B.K. Vasuki, J**Bench:** Single Bench

Judgement

@JUDGMENTTAG-ORDER

K.B.K. Vasuki, J.

The husband/petitioner herein filed this criminal revision against the issuance of "Distress warrant" against him for his failure to appear before the Court to answer the claim for recovery of maintenance of Rs. 60,000/- relating to the period from 8.8.2007 to 8.8.2008. The petition was filed by the wife u/s 128 of the Code of Criminal Procedure for directing the respondent/husband to clear all the arrears to the tune of Rs. 60,000/- at the rate of Rs. 5,000/- p.m. for 12 months. In spite of due summons, the husband failed to appear before the Court concerned, which compelled the Court to set him ex-parte and to allow the petition and to issue a "Distress Warrant" through the Additional Educational Officer, Tirupathur.

2. The said order was challenged herein on the ground that the proper relief to be granted u/s 128 of the Criminal Procedure Code is, in the event of failure of the husband to pay maintenance arrears, to issue "Distrainment Warrant" as provided under Sections 421 and 431 of the Code either for attachment and sale of any movable property belonging to the petitioner or to issue warrant to the Collector of the District, authorising him to realise the amount as arrears from the movable or immovable property or both. The learned counsel for the petitioner would in support of such contention also cite authority of this Court in [S.T. Prabhakar Vs. Secretary to Government, Home Department and Others](#), .

3. It is true that the learned brother Judge after detailed discussion has observed in paragraph 12 of his judgment that the "Distress Warrant" issued for the failure to pay arrears of maintenance is illegal and set aside the conviction and imprisonment of the accused/husband and released him forthwith. For better appreciation, paragraphs 9 and 10 are extracted below:

A glance through the above provision would show that u/s 125(3) of the Code, there is a limitation to entertain the petition and u/s 128 of the Code, there is no such limitation provided for enforcing the order. The limitation provided u/s 125(3) is one year. Therefore, the petition can be filed u/s 125(3) of the Code only in respect of arrears for a period of 12 months. But, in the given case, the petition was filed to recover the arrears for a period of 13 months. That was the reason why, probably the petitioner had thought it fit to file the same u/s 128 of the Code, for which, there is no limitation period. Therefore, it is crystal clear that the wife of the petitioner had consciously filed the petition u/s 128 of the Code for recovery of the amount due for a period of 13 months. Of course, it is true that the petitioner was absent on 23.5.2005 and he did not make any payment, and thus, he committed default. While dealing with a petition u/s 128 of the Code, in such an event, the next course to be adopted by the Magistrate is to issue a "Distrainment Warrant" as provided under Sections 421 and 431 of the Code either for attachment and sale of any movable property belonging to the petitioner or to issue a warrant to the Collector of the District, authorizing him to realise the amount as arrears from the movable or immovable property or both of the petitioner.

A perusal of the records would go to show that the learned Judicial Magistrate, by order dated 23.5.2005, directed issuance of only such a distrainment warrant. Form No. 44, as provided in the second schedule to the Code of criminal Procedure is the warrant for recovery of fine. The learned Judicial Magistrate, while passing the order to issue a Distrainment Warrant, he meant to issue Form No. 44, viz., warrant for recovery of fine only. To this extent, the learned Judicial Magistrate had done everything in accordance with law.

4. Applying the same view to the facts of the present case, the impugned order of "Distress Warrant" issued against the petitioner for recovery of the amount stands modified as "Distrainment Warrant".

5. In the result, impugned Distress Warrant stands modified as "Distrainment Warrant" by directing the District Collector to realise the maintenance of arrears of Rs. 35,000/- from the salary of the petitioner by issuing attachment order at the rate of Rs. 5,000/- p.m. to be commenced from the month of December 2013. Liberty is given to the respondent/wife to prefer an appropriate application for arrears if any for the subsequent period. The Criminal Revision Petition is accordingly ordered.