

Rajasthan High Court

Baldevi vs Ramnath on 22 November, 1954

Equivalent citations: AIR 1955 Raj 61, 1955 CriLJ 621

Author: Wanchoo

Bench: Wanchoo, Bapna

JUDGMENT Wanchoo, C.J.

1. This is a reference by the Sessions Judge of Jaipur, and has arisen in the following circumstances.
2. Shrimati Baladevi obtained an order Under Section 488, Cr.PC on 1-2-1952, from a Magistrate, by which she was allowed Rs. 30/- per month as maintenance allowance from her husband Ramnath. On 28-3-1952, she applied for execution with respect to one month's amount due to her. She also prayed that Ramnath's salary, which is payable every month by the Superintendent, Divisional Telegraph Office, Ajmer, might be attached and he might be asked to send Rs. 30/- per month to her.  
  
A notice was issued to Ramnath, and he objected that this procedure could not be employed for the realisation of maintenance amount granted Under Section 488. That objection was upheld by the Magistrate, and the application was dismissed.
3. Thereupon, Shrimati Baladevi went in revision to the Sessions Judge who has disagreed with the view taken by the Magistrate, and has made this reference.
4. The Magistrate has relied on 'Soe Hlaing Maung v. Ma Thein Khin' AIR 1934 Rang 82 (A). The Sessions Judge says that if the view taken by the trial magistrate is allowed to stand, it may mean that the applicant can never get the amount of salary attached throughout her whole life in payment of arrears of maintenance allowance. Consequently he has made this reference with the recommendation that we should allow the prayer of Shrimati Baladevi for attachment of her husband's salary month by month in payment of the maintenance as it becomes due.

5. A perusal of the various provisions of the Criminal Procedure Code will show that the kind of prayer made by Shrimati Baladevi to her application on 28-3-1952 cannot be allowed by the criminal court. Section 488(3) provides for execution of order of maintenance, and under it if any person fails to comply with the order, any Magistrate may, for every breach of order, issue a warrant for levying the amount due in manner hereinbefore provided for levying fines. There is also a provision for sentencing the man to imprisonment for a term extending up to one month or until payment is made. Therefore, Shri Baladevi could only ask on the date on which she made her application, namely 28-3-1952, for realisation of one month's arrears which were due to her. She could not possibly ask for an order of attachment Under Section 488(3) for moneys due to her as maintenance, which had not accrued to her up to that date.

6. So far as this amount of Rs. 30/- is concerned, she could certainly ask for realisation of it Under Section 488(3), and the method provided is given in Section 386 of the Code of Criminal Procedure. That section provides two ways under which fines may be realised, and the same procedure applies

to realisation of maintenance allowance.

These two ways are

(a) issue of a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender,

(b) issue of an order to the Collector of the District authorising him to realise the amount by execution according to civil process against the movable or immovable property, or both, of the defaulter.

7. Shrimati Baladevi In this case prayed for attachment Under Section 386(1) (a) and the question was whether it was open to the Magistrate to attach future salary as and when it became due towards payment of the amount due to Shrimati Baladevi on 28-3-1952. This depends upon the interpretation Of Clause (a) of Section 386(1).

8. That clause authorises the Magistrate to attach any movable property belonging to the offender. Movable property has not been defined in the Criminal Procedure Code, but the definition of it given in Section 22, Penal Code can be used by virtue of 8. 4(2) of the Code of Criminal Procedure. Under Section 22, Penal Code, movable property includes corporeal property of every description except land and things attached to the earth or permanently fastened to anything which is attached to the earth This definition is more restrictive, and different from that given in the General Clauses Act where movable property means property of every description except immovable property. It appears to us that for purposes of the Penal Code movable property meant tangible corporeal property which could be perceived and seized.

Further as Section 386. Cr.PC provides two separate ways of realizing fines, namely (1) by attachment and sale of movable property by the Magistrate, and (2) by civil process, it seems to us that the intention was that the first method should be used where it was possible for the property to be seized. Further, Clause (a) shows that, the property, which is to be seized, must belong to the offender, and It was only at that stage that the magistrate could attach it and proceed to sell it. We are, therefore, of opinion that so far as the words "movable property" in Clause (a) of Section 386 are concerned, they refer to tangible movable property which can be seized, ,and which must be belonging to the offender. If it is movable property of other description, the remedy is under Clause (b) by civil process. The very fact that execution by civil process is allowed- in the case of movable property also shows that there is difference in the meaning of the words 'movable property' as used in Clause (a) and as used in Clause (b). Shrimati Baladevi, therefore, could not ask the magistrate to attach the future salary of Ramnath as and when it became due for two reasons. In the first place, future salary was not tangible corporeal property available for seizure. In the second place, it did not belong to Ramnath because he could not be said to have earned his future salary. The magistrate, therefore, was right in holding that no attachment of future salary could be made under the provisions of the criminal law.

He has, however, gone further, and said following the 'Rangoon case' AIR 1934 Rang 82 (A) that even where the salary has been earned but has not been drawn, it cannot be attached. If by this he means salary that has not been drawn by proper bill and come into the office of the Government servant, his observation is correct, for until the salary has come into the office on a bill drawn for the purpose and accepted by the treasury, it cannot be said to be property belonging to the salary earner. But if the Magistrate further means that unless it is actually paid over to the salary earner, it cannot be attached as movable property, he is wrong. The procedure in Government is that a bill is drawn and the money is paid by the Treasury on the passing of the bill, and is received in the office where an employee is in service. As soon as it is received there, it, in our opinion, belongs to the employee, and all that the office has to do further is to pay it over to him. Therefore while the money is still In the office, a person may attach it on a warrant of the magistrate.

9. The kind of execution which Shrimati Baladevi wanted can only, in our opinion, be done if she takes action under Clause (b) of Section 386 (1). The words used in that clause include property both movable and immovable, and if a person desires attachment of salary in the manner provided in Order 21, Rule 48, he has to ask the Magistrate to issue an order to the Collector under Clause (b) for execution according to civil process which, of course, will be subject to all the limitations provided in the Civil Procedure Code.

Shrimati Baladevi in this case only asked for attachment of future salary by the magistrate, and the magistrate was right in refusing to do so Under Section 488 f3) read with Section 386(1), Cr.PC

10. There is no force, therefore, in this reference, and it Is hereby rejected.