

**ORDER ON THE APPLICATION FILED BY THE PETITIONER
UNDER SECTION 421 R/W 431 OF CrPC**

1. This application has been filed by the petitioner U/Sec.421 R/w 431 of CrPC praying to attach the pension of the petitioner and also to award the interest on the agreed amount of Rs.2,75,000/-.
2. The respondent has filed the objection, the respondent has furnished a ruling of The Hon'ble Apex Court in Civil Appeal Nos.6440-41 of 2008, I have perused the ruling, I have heard both the sides and further I have perused the available relevant materials on record.
3. The undisputed facts are that the petitioner has filed this petition U/Sec.125 of CrPC seeking maintenance, the matter has been ended in compromise, the joint memo was filed by parties wherein the respondent has agreed to pay Rs.2,75,000/- as one time settlement of maintenance amount. In the joint memo the respondent has agreed to pay Rs.2,75,000/- on 31.05.2024. The joint memo was accepted by this Court and the respondent even ordered to pay the agreed amount of Rs.2,75,000/-. At the time of acceptance of joint memo itself this Court has clearly held that the respondent shall pay Rs.2,75,000/- on or before 31.05.2024, failing which the amount will be recovered as if it is a fine U/Sec.421 R/w 431 of CrPC.
4. However on 31.05.2024, the respondent did not pay the as agreed by him by citing his health grounds and sought for 20 days of time. After 20 days again the respondent did not pay the amount and submitted few medical documents to show that he is ill. On 21.06.2024 the ld. Counsel for the respondent clearly submitted that the respondent is not ready to pay the amount agreed by him.
5. As per Sec.431 of CrPC, if any money payable by virtue of an order made under CrPC and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine. As mentioned above the joint memo was accepted by the Court and the Court has ordered the respondent to pay the amount of Rs.2,75,000/- to the petitioner. The objection of the respondent is that, the respondent

himself suffering from ill health and he is not in a position to pay the amount and according to the respondent pension cannot be attached. The contention of the ill health of the respondent is not a ground to deny the maintenance amount to the petitioner. The respondent has relied upon the ruling of The Hon'ble Supreme Court of India in Civil Appeal Nos.6440-41 of 2008 between Radhey Shyam Gupta V/s Punjab National Bank and another. I have perused this ruling, this ruling is pertaining to the recovery of money pertaining to bank loan. In the case on hand, it is the recovery of maintenance amount. The facts are certainly not similar. Hence this judgment relied upon by the respondent is not at all applicable to the case on hand.

6. The simple question is, whether a pension can be attached in recovery of maintenance amount?

6.1 This question has been duly answered by The Hon'ble two High Courts, the first one is The Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Revision Application No.202 of 2018 in between Bhagwant s/o Pandurang Narnawre V/s Radhika w/o Bhagwant Narnawre (D.D 05.04.2019) and the 2nd one is the The Hon'ble High Court Of Judicature At Madras in Crl.R.C.No.1501 of 2022 in between P. Amutha V/s Gunsekaran (D.D 23.12.2022). Both these Hon'ble High Courts have unambiguously held that **the maintenance amount granted to wife cannot be considered as a debt and she is not a creditor as such the bar U/Sec.11 of The Pension Act, 1871 as well as exemption provided in Sec.60(1)(g) of CPC cannot be granted to husband** as such both The Hon'ble High Courts have held that for the recovery of maintenance amount certainly pension can be attached.

7. The petitioner is seeking interest on the agreed amount of Rs.2,75,000/-. As mentioned above, the respondent had agreed to pay this amount on 31.05.2024 and admittedly he has defaulted. **The Hon'ble High Court of Judicature at Bombay in Criminal Revision Application No. 175 Of 2023 in between Prakash S/o Eknath Dheple Versus Vithabai W/o Prakash Dheple, (D.D 10.05.2024)** has held as hereunder:-

“The trial Courts are not awarding interest on maintenance amount. There is no any legal ban to award interest on that amount of maintenance. The husbands or fathers are many a times are not depositing the arrears of maintenance for years together. They have no fear or burden to payment of interest on that amount of maintenance. It is serious legal mischief in mischief. Section 125 of the CrPC does not prohibit to wards maintenance. Therefore, Courts of District Judiciary are expected to award interest on the amount of maintenance, so that these weaker sections of the society will get their maintenance amount expeditiously. It will serve the purpose of speed justice. Thus, in order to secure their rights fully, effectively and speedily which is an object of justice interest must be awarded which is rationally expected. Their amount of maintenance shall not remain in the hands of the other side which deprives them for maximum period from it. Thus, it is now mandatory to award interest on the amount of maintenance for that this judgment shall be circulated to the District Judiciary of Maharashtra.”

8. No doubt, this aforesaid ruling is of the Hon’ble High Court of Judicature at Bombay, though not it is a binding precedent, certainly it is

having the persuasive value. In the case on hand the respondent has agreed to pay an amount of Rs.2,75,000/- on 31.05.2024, he has defaulted, as held by The Hon'ble High Court of Judicature at Bombay in the aforesaid ruling that there is no legal bar to award interest. Hence I am inclined to consider the prayer of the petitioner with regard to interest also. In that case the Hon'ble High Court of Judicature at Bombay has awarded Rs.9% per annum as interest, I am inclined to follow the same. With these observations, I proceed to pass the following:-

ORDER

The application filed by the petitioner U/Sec.431 R/w 421 of CrPC is hereby allowed.

The respondent is liable to pay an amount of Rs.2,75,000/- with interest at the rate of Rs.9% per annum from 01.06.2024 till realization.

The Pension Dispersing Officer of the respondent is hereby directed to deduct 50% of the pension amount from the pension of the respondent and deposit the same to the office of this Court until further order.

Office to communicate this order to The Pension Dispersing Officer of the respondent forthwith.

Await compliance by 30.09.2024.

12.08.2024.

The Civil Judge and JMFC,
Yelandur.