NEUTRAL CITATION
2019:GUJHC:53837

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL REVISION APPLICATION NO. 920 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE B.N. KARIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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ASHOKBHAI DEVSINGBHAI CHAUHAN
Versus
TARABEN ASHOKBHAI CHAUHAN

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Appearance:
MR NIKHILESH J SHAH(3007) for the Applicant(s) No. 1
GAYATRI P VYAS(9391) for the Respondent(s) No. 1
MR MAHESH BHAVSAR(1781) for the Respondent(s) No. 1
MRS HM BHAVSAR(5340) for the Respondent(s) No. 1
MR JK SHAH, APP for the Respondent(s) No. 2
SONAL J BHAVSAR(7399) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE B.N. KARIA**

Date : 11/11/2019

CAV JUDGMENT

The present applicant has challenged the judgment and order dated 16.07.2019 passed by learned Principal Judge,

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Family Court No.1, Ahmedabad in Criminal Misc. Application No. 1328 of 2019 directing Bank of baroda, Science City Branch to deduct Rs. 30,000/- per month from the pension account of the applicant and credit to the account of the respondent no.1 towards the maintenance amount in arrears to the tune of Rs. 10,23,678/-.

Brief facts of the present case are as under:

That, the marriage of the applicant and the respondent no.1 was solemnized at Ahmedabad on 19.05.1996 as per the rites and ritual of their society. That, there was second marriage of both the parties and both of them had known the said fact prior to their marriage. That, thereafter on 08.07.2001, respondent no.1 left her matrimonial home without any reason and later on, the respondent no.1 filed cases against the applicant wherein initially in the year 2001, Rs. 500/- was awarded towards maintenance amount and presently, the maintenance has been raised to Rs. 15,000/- per month. Thereafter, a compromise pursis was filed in the proceedings of Family Suit No. 367/2009 on 09.05.2011 but no order was passed by the learned Judge of the Family Court on this aspect and accordingly, the respondent no.1 has once

again started to stay with the applicant at her matrimonial home and thereafter, the amount of monthly maintenance was increased to Rs. 8000/- per month and respondent no.1 has desserted husband without any reason and once again started filing litigation against the applicant and Criminal Misc. Application No. 1328 of 2019 was filed for recovery of maintenance for four months. The learned Family Court has passed the impugned order.

Heard learned advocates for the respective parties and learned APP for the respondent no.2-State.

It was submitted by learned advocate for the applicant that the respondent no.1 has concealed the important fact in her application that she had stayed with the applicant for two years and therefore, she is not entitled to get any relief, though, this fact was not considered by the learned lower court is totally against the record. That, the issue of limitation was raised before the trial court, though, not considered the same. That, many applications are still pending to be disposed of and hence, entire proceeding is liable to be vitiated. Learned advocate for the applicant has mainly focused his arguments of deducting the amount of maintenance from the

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pension accrued of the applicant-husband and relied upon Section 11 of the Pension Act 1871. It is submitted that as per the said section, pension cannot be attached. That, learned Family Court has directed the applicant-husband to pay maintenance at Rs. 30,000/- per month to the respondent no.1-Wife is perverse and illegal. It is further submitted that the amount of Rs. 30,000/- as maintenance from the pension accrued by the applicant-husband is exorbitant. That, order is totally against the provisions of law and hence, illegal. That, the no one can be punished for more than once as by not paying of maintenance. That, the husband is in custody at present. That, the order clearly violates Article 21 of the Constitution of India. That, the order of sentence recorded by the learned Judge of the Family Court is contrary to the provisions of law, facts and evidence adduced in the Court, and therefore, the order deserves to be quashed and set aside. It is further submitted that learned Family Court has not properly appreciated the facts, evidence and circumstances of the case in their true perspective, which has resulted in failure of justice ie. miscarriage of justice. In support of his arguments, learned advocate for the applicant has placed

reliance upon the following judgments:

1. Om Prakash v. Javitri Devi, reported in 2018(1) DMC 462
2. Vasanthi Devi v. Vijaya Bank, Ashok Nagar Branch, Mangalore, reported in 1997(2) KarLJ351
3. Union of India v. Wing Commander R. R. Hingorani (Retd.) reported in (1987) 1 SCC 551

Ultimately, it was requested by learned advocate for the applicant to quash and set aside the judgment and order dated 16.07.2019 passed by learned Principal Judge, Family Court No.1, Ahmedabad in Criminal Misc. Application No. 1328 of 2019 by allowing this revision application. No further arguments were advanced by the learned advocate for the applicant.

From the otherside, learned advocate for the respondent no.1 has strongly opposed the submissions made by learned advocate for the applicant and supported the impugned judgment and order passed by the family court. It was further submitted that as per the order dated 11.05.2018 passed by Family Court, Ahmedabad, maintenance amount awarded to the respondent no.1 was increased from Rs. 8,000/- to Rs.

15,000/-. That, on 19.05.1996, the marriage of the applicant and the respondent no.1 was solemnized and thereafter it was dissolved on the ground of cruelty and desertion w.e.f. date of the decree under the provisions of the Hindu Marriage Act. That, the amount of Rs. 20 lacs towards permanently alimony under Section 25 of the Hindu Marriage Act was awarded to the respondent no.1. That, as per the order, if the husband pays aforesaid amount of permanent alimony to the divorced wife, all the orders passed to pay maintenance to the divorced wife would come to an end. If the applicant-husband fails to pay aforesaid amount of permanent alimony to the wife, she would be entitled to claim for maintenance. As the permanent alimony was not paid to the wife, respondent no.1-Wife moved an application being Criminal Misc. Application No. 1328 of 2019 before the learned Family Court to recover outstanding maintenance amount to the tune of Rs. 60,000/- (Sixty Thousand) w.e.f. 17.12.2018 to 16.04.2019 for a period of four months. Apart from this, the applicant-husband has not paid outstanding amount of maintenance to the tune of Rs. 10,48,233/-, as the applicant was working in the bank and took voluntary retirement with a view to not paying the

amount of maintenance to the divorced wife. The husband is getting pension amount of Rs. 34,409/- per month. Moreover, from 18.05.2012 to 11.07.2019, total amount in the account of the applicant with Bank of Baroda was deposited to the tune of Rs. 46,74,268.83 ps, while withdrawal amount during the said period was of Rs. 46,74,249.50 ps. That, balance amount was of Rs. 19.43 ps. only. That, the intention of the husband-applicant was not to pay the maintenance to the wife. That, he has enough source of income to maintain divorced wife, however, he was not paying the amount of maintenance. Learned advocate has drawn attention of the bank statement of the account of applicant with the Bank of Baroda. He has further submitted that while retiring from the services under VRS Scheme, the applicant has received huge amount and he has purchased the land in Dhangadhra in the name of his brother. That, the applicant is an advocate and his son is also earning. That, the applicant is bound to make the payment of maintenance to his wife. However, he has not clear the arrears of maintenance amount of Rs. 10,48,233/- + Rs. 60,000/-. Learned Family Court has rightly passed the order dated 16th July 2019 attaching the pension amount with a direction to

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credit Rs. 30,000/- p.m. in the account of the respondent no.1-wife by way of maintenance. That, divorced wife is entitled to get maintenance from the pension amount of the husband. That, wife is not a creditor and hence, exemption under Section 11 of the Pension Act 1871 cannot be granted to the husband, that means, the pension amount can be attached for recovery of the amount of maintenance on behalf of the wife. In support of his arguments, learned advocate for the respondent no.1 has relied upon the judgment of the High Court of Bombay in Criminal Misc. Application No. 202 of 2018 and ultimately, he has requested to dismiss the present application preferred by the applicant-husband.

Learned APP for the respondent no.2-State has supported the arguments advanced by learned advocate for the respondent no.1-wife and has submitted that provisions of Section 11 of the Pension Act 1871 would not be applicable while considering the facts of the present case. That, wife cannot be considered as creditor as provided under Section 11 of the Pension Act. That, husband is bound to pay the amount of maintenance as ordered by the court and it is his personal liability. That, the husband cannot avoid his liability and raised

his hands under the shelter of Section 11 of the Pension Act. That, the purpose of getting pension by the husband was to meet with the expenditure of his family including the wife. Hence, it was requested by learned APP to dismiss the revision application preferred by the applicant-husband and confirm the impugned judgment and order dated 16.07.2019 passed by learned Principal Judge, Family Court No.1, Ahmedabad in Criminal Misc. Application No. 1328 of 2019.

Having considered the facts of the case and crucial issue raised before this court by learned advocate for the applicant and mainly focused the only issue to be adjudicated by this Court of attaching the pension amount from his bank account, some important facts would require to be discussed by the court. Initially, the respondent no.1-wife had filed one Criminal Misc. Application No. 2701 of 2009 for enhancement of maintenance under Section 127 of the CrPC, wherein the learned Judge of the Court increased the amount of maintenance to the tune of Rs. 8,000/- instead of Rs. 1,500/- per month. Thereafter, respondent no.1-wife filed in all 10(ten) Criminal Misc. Applications for recovery of arrears of maintenance amount from the applicant-husband, who had

declined and refused to pay the amount of accrued maintenance as ordered by the Court, and therefore, he was ordered to undergo simple imprisonment. The details of recovery applications filed by the respondent no.1-wife against the present applicant-husband and amount of maintenance due as payable by the applicant-husband to the respondent no.1-wife and sentenced of imprisonment imposed upon the applicant-husband are as under:

Sr. No.	Cr.M.A. No.	Outstanding amount of maintenance	Sentence imposed upon opponent
1	1487/2013	Rs. 2,42,233/-	457 days
2	2421/2014	Rs. 1,000/-	04 days
3	310/2015	Rs. 2,000/-	08 days
4	1633/2015	Rs. 40,000/-	150 days
5	1290/2016	Rs. 88,000/-	330 days
6	2267/2017	Rs. 96,000/-	360 days
7	1434/2018	Rs. 56,000/-	210 days
8	1681/2018	Rs.3,68,000/-	1500 days
9	2680/2018	Rs. 60,000/-	120 days
10	116/2019	Rs. 60,000/-	120 days
Total		Rs. 10,13,233/-	3259 days

Thereafter, it appears that the respondent no.1-wife filed another application being Criminal Misc. Application No. 589 of 2014 for enhancement of maintenance, wherein after

recording evidence of the wife and witnesses, the amount of maintenance was increased at Rs. 15,000/- per month instead of Rs. 8,000/- per month from the date of that application ie., 11.05.2018. After passing the order by the Court, respondent no.1-wife approached the Family Court to recover maintenance amount of Rs. 60,000/- as due and payable by the applicant for the period of four months ie., from 17.12.2018 to 16.04.2019. The prayer made by the respondent no.1-wife was opposed by the present applicant by filing his written objections relying upon Section 11 of the Pension Act 1871 submitting that no order can be passed by the court as 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 pensioner, or in satisfaction of a decree or order of any such Court. Under Section 125(3) of the CrPC, punishment can be awarded only for maximum period of one month for the default of payment of

maintenance of one month and he is ready and willing to undergo imprisonment, and therefore, no further proceedings can be initiated against him, and thus, the prayer made by the respondent no.1-wife can not be granted. That, he is maintaining his mother, because she is completely dependent upon him. That, he has to manage amount of advocate from the amount of this pension as he has no source of other income. That, certain amount was paid by him in different Criminal Misc. Applications preferred by the respondent no.1-wife and it was requested by him to dismiss the application. It appears from the record that one witness was summonsed by the court asking authorized officer of Bank of Baroda to remain present and assist the Court in view of the applications filed by the respondent no.1-wife vide Ex. 7 and 9. The authorized officer of the Bank of Baroda remained present and answered to the witness summons and produced the statement of pension account bearing No. 36590100000702 and statement of savings account bearing No. 03330100007645 of the applicant-husband before the Family Court vide Ex. 10. From the Statement of pension account for the period from 18th May 2012 to 11th July 2019, it appears that the applicant-

husband has been getting pension of Rs. 34,489/- per month from April 2019 onwards from Bank of Baroda. It further clears from the statement that during the said period, total amount in the account of applicant was credited at Rs. 46,74,268.83 ps., whereas the withdrawal amount during the said period was of Rs. 46,74,249.50 ps. and as on recording evidence of witness, the balance amount in his pension account was of Rs. 19.43 ps. It appears from the pension statement that applicant had withdrawn an amount from his pension account by way of "Auto sweep" number of times in the years 2012 and 2013, and thereafter, by ATM as well as by other modes also. Such an amount was withdrawn by the present applicant immediately after the pension and other amounts deposited to his account. The learned Family Court has rightly considered the reasons for that dispute was taken place between the applicant and respondent no.1-wife when applicant was serving with the bank and much prior to the voluntary retirement of the applicant from the bank. The sole intention of the applicant-husband for withdrawal of the amounts soon after deposited into his account is to avoid to pay maintenance to the respondent no.1-wife. On 1st may

2019, balanced amount in the account of the applicant-husband was found at Rs. 19.43 ps. only.

Learned family court has also observed that while applicant-husband was inquired orally about the amount of his pension, it was replied by him before the court that he was drawing pension of Rs. 10,500/- per month, which was falsified from the statement of pension account of the applicant-husband produced by the witness. It appears from the reasons passed by the Family Court that the applicant has deliberately and intentionally not paid the amount of maintenance to his wife and has made false statement before the Court, despite he has sufficient independent source of income and has fully disobeyed the order of the Court. Impugned order cannot be said to be illegal or wrong as well as perverse. Imposition of the sentence of simple imprisonment upon the applicant for willful default of the order passed by the court as provided under Section 125(3) of the CrPC was imposed and the applicant was in jail as he was undergoing total imprisonment of 3259 days. In the objection filed by him, he has shown his readiness and willingness to undergo imprisonment in the default of payment of maintenance and

he was not ready and willing to pay amount of accrued maintenance to his wife. The attitude and conduct of the applicant would also require to be considered by the court and has rightly appreciated by the learned Family Court. It is not in dispute that as per the undertaking given by the present applicant to pay permanent alimony in another proceedings of divorce was not paid by him to the respondent no.1-wife.

For reference, Section 11 of the Pension Act 1871 is reproduced as under:

> **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.
>
> [This section applies 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 ommitted by S. 2 A.L.O., 1956 (1-11-1956)
>
> (b) Inserted by A.O. 1937 (1-4-1937)
>
> (c) that is, on or after 1-4-1937"

In the case of **Om Prakash v. Javitri Devi**, reported in

2018(1) DMC 462, relied upon by learned advocate for the applicant, in para 12, Hon'ble High Court of Punjab and Haryana has observed as under:

> 12. Section 125 of the Code of Criminal Procedure has been enacted to ensure that a wife, minor child or old-age parents are maintained and not subjected to vagrancy and destitution. Grant of maintenance to the wife has been perceived as a measure of social justice by the courts and the said section falls within the constitutional sweep of Article 15 (3) reinforced by Article 39 of the Constitution of India. It provides speedy remedy for supply of food court clothing shelter to the deserted wife while ensuring that the husband fulfills his moral and legal obligation to support his family be it a minor child, wife or aged parents. So in that background there is no infirmity in the order of the District Judge awarding interim maintenance.
>
> The final maintenance has still to be settled after taking into account the capacity of the petitioner to pay maintenance as well his liabilities. There is only an embargo, as enacted in Section 11 of the Pension Act and under Section 60 (1) (g) CPC, to attaching of pension in satisfaction of the said amount.

In the cited case, only conditional warrants of arrest were issued and as on date there was no order of attachment of pension. It was held by Punjab and Haryana High Court that the petitioner-husband could have challenged the same by relying upon the judgments referred thereon. The final maintenance was still to be settled after taking into account the

capacity of the petitioner to pay maintenance as well his liabilities. The order passed by the District Judge awarding interim maintenance against the petitioner was not interfered and petition filed by the husband was dismissed. Considering the facts of the cited case, the arguments advanced by the learned advocate for the applicant cannot be sustained.

In another case of Vasanthi Devi v. Vijaya Bank, Ashok Nagar Branch, Mangalore, reported in 1997(2) KarLJ351, there was a question of sue of warrant attaching the sum of Rs. 300/- per month out of the pension amount payable to the petition towards realization of the money decree which was obtained by the respondent decree holder against petitioner and which was put in execution. The Hon'ble High Court of Karataka, considering the legal preposition laid down by the Hon'ble Supreme Court by virtue of Section 11 of the Pension Act and Section 60(1)(g) of the CPC, held that pension amount of the government employee is exempted from attachment in law in execution of the decree in question. It appears from the facts of the case that it was a civil dispute between the petitioner and the decree holder and order was passed in Execution Case 101 No. 489 of 1989 issued attachment

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warrant for Rs. 300/-.

In case of **Union of India v. Wing Commander R. R. Hingorani (Retd.)** reported in (1987) 1 SCC 551, there was a question of recovery of money due for unauthorized exculpation of Government Servant, amount equivalent to market rent claimed for unauthorized occupation of quarter. The question of whether such amount can be deducted from pension payable to the Government employee. Hon'ble Apex Court held that no estoppel can be inferred against such recovery or relaxation by Government and the amount cannot be deducted from the commuted pension payable to the employees. Hon'ble Apex Court while referring the earlier judgment of Apex Court in case of Union of India v. Jyoti Chit Fund and Finance, reported in 1976(3) SCR 763 has observed as under:

> 9. In the premises, it is difficult to sustain the judgment of the High Court and it has to be reversed. Nonetheless, the writ petition must still succeed for another reason. It is somewhat strange that the High Court should have failed to apply its mind to the most crucial question involved, namely, that the Government was not competent to recover the amount of Rs.20.482.78p. alleged to be due and payable towards damages on account of unauthorised use and occupation of the flat from

the commuted pension payable to the respondent which was clearly against the terms of s. 11 of the Pensions Act, 1871 which reads as follows:

> "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."

According to its plain terms, s. 11 protects from attachment, seizure or sequestration pension or money due or to become due on account of any such pension. The words "money due or to become due on account of pension" by necessary implication mean money that has not yet been paid on account of pension or has not been received by the pensioner and therefore wide enough to include commuted pension. The controversy whether on commutation of pension the commuted pension becomes a capital sum or still retains the character of pension so long as it remains unpaid in the hands of the Government, is not a new one till it was settled by the judgment of this Court in Union of India v. Jyoti Chit Fund & Finance & Ors., [1976] 3 SCR 763. We may briefly touch upon the earlier decisions on the question. In an English case, in Crowe v. Price, [1889] 58 LJ QB 215 it was held that money paid to a retired officer of His Majesty's force for the commutation of his pension does not retain its character as pension so as to prevent it from being taken in execution. On p.217 of the Report, Coleridge, CJ. said:

> "It is clear to me that commutation money stands on an entirely different ground from pension money, and that if an officer commuted his pension for a capital sum paid down, the rules which apply to pension money and make any assignment of it void, do not apply to this sum."

Following the dictum of Coleridge, CJ., Besley, CJ. and King, J. in Municipal Council, Salem v. B. Gururaja Rao, ILR [1935] 58 Mad. 469 held that when pension or portion thereof is commuted, it ceases to be pension and becomes a capital sum. The question in that case was whether the commuted portion of the pension of a retired Subordinate Judge was income for purposes of assessment of professional tax under s.354 of the Madras District Municipalities Act, 1920. The learned Judges held that where pension is commuted there is no longer any periodical payment; the pensioner receives once and for all a lump sum in lieu of the periodical payments. The pension is changed into something else and be- comes a capital sum. On that view they held that the sum received by the retired Subordinate Judge in lieu of the portion of his pension when it was commuted was no longer pension and therefore not liable to pay a professional tax under s.354 of the Madras District Municipalities Act. That is to say, the commuted portion, of the pension was not income for purposes of assessment of professional tax in a municipality. The question arose in a different form in C. Gopalachariar v. Deep Chand Sowcar, AIR 1941 Mad. 207 and it was whether the commuted portion of the pension was not attachable in 104 execution of a decree obtained by certain creditors in view of s. 11 of the Pensions Act. Pandurang Row, J. interpreting s. 11 of the Act was of the opinion that not only the pension but any portion of it which is commuted came within the provisions of the section. He particularly referred to the words "money due or to become due

on account of pension" appearing in s. 11 of the Act which, according to him, would necessarily include the commuted portion of the pension. He observed that the phrase "on account of" is a phrase used in ordinary parlance and is certainly not a term of art which has acquired a definite or precise meaning in law. Accordingly to its ordinary connotation the phrase "on account of" means "by reason of" and he therefore queried:

> "Now can it be said that the commuted portion of the pension is not money due on account of the pension? Though the pension has been commuted, still can it be said that money due by reason of such commutation or because of such commutation, is not money due on account of pension?"

He referred to s. 10 of the Act which provides for the mode of commutation and is part of Chapter III which is headed "Mode of Payment", and observed:

> "In other words, the commutation of pension is regarded as a mode of payment of pension. If so, can it be reasonably urged that payment of the commutation amount is not payment on account of the pension, though not of the pension itself, because after commutation it ceases to be pension? I see no good reason why it should be deemed to be otherwise. No doubt money is due immediately under the commutation order, but the commutation order itself is on account of a pension which was commuted or a portion of the pension which was commuted. The intention behind the provisions of s. 11, Pensions Act, is applicable to 'the commuted portion as well as to the uncommuted portion of the pension and the language of s. 11 does not appear to exclude from its protection the money that is due under a

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commutation order commuting a part of the pension."

True that, Section 11 of the Pension Act 1871 includes that portion of pension payable to the employee after his retirement, Government may not have any authority or power deducting the amount from that pension payable to the employees and if it is then it is contrary to Section 11 of the Pension Act. Here, the fact is quite contrary to the facts of the cited case, as the wife has claimed to pay amount of maintenance as ordered by the court, which was intentionally not paid by her husband-present applicant. Learned family court has rightly ordered to attach the pension by deducting the amount of Rs. 30,000/- per month from his pension amount and credit the said amount to the respondent no.1 – wife. Thus, the judgment relied upon by the learned advocate for the applicant would not be applicable to the facts of the present case. As per the facts of that case, the appellant stood guarantor for the principal debtor as the amount was not repaid by him, the bank filed a suit in 1992 for recovery of its due against the respondent no.2 in his capacity as the loanee and against the appellant in his capacity as guarantor. The said suit was decreed by the learned Additional District and

Sessions Judge, Bayana, Dist: Bharatpur in favour of the respondent no.1 bank for a sum of Rs. 1,10,360/- together with interest at the rate of 12.5% per annum. The Hon'ble Apex Court, considering the facts held that instead of disturbing the order passed by the Executing Court, which was passed in consonance with the provisions of Code of Civil Procedure, High Court should have directed the respondent bank and the executing court to seriously pursue the recovery of the Matador or against any other property of the principal-debtor, having particular regard to the finding of the Executing Court that the said fixed deposits represented the retiral benefits of the appellant, the respondent bank may take appropriate steps for recovery of the Matador for recovery of its dues in the manner indicated in the judgment and in the decree of the trial Court. Hon'ble Apex Court further held that after retiral benefits such as pension and gratuity received by the appellant, they did not lost their character and continued to be covered by proviso (g) to Section 60(1) of the Code. In the cited case also, the facts are quite different rather than the facts of the present case.

Hon'ble Bombay High Court, in case of Bhagwant son of Pandurang Narnawre v. Radhika w/o Bhagwant Narnawre (Criminal Revision Application No. 202 of 2018) has referred section 11 of the Pension Act 1871 and held that in civil disputes, pensions cannot be attached at the instance of creditors. Commentary relied upon by the learned advocate for the applicant/husband at serial no. 16 under the head of attachment shows that "maintenance allowance granted to wife cannot be considered as debt, she is not a creditor hence exemption under Section 11 cannot be granted to husband (1985)87 Punk LR 682: (1985) 12 Cri LT 219. It was further observed that the said commentary itself shows that the pensions can be attached to recover the amount of maintenance. Hence, the stand taken by learned advocate for the applicant/husband that pensions cannot be attached is not digestible.

Here also, the applicant-husband is retired voluntarily from the bank services. He has sufficient income after getting his retirement by way of pension. In the objections raised by him before the family court, he has shown his willing to

undergo for imprisonment instead of paying the amount of maintenance as per the order passed by the family court in favour of the respondent no.1-wife. Thus, the conduct of the applicant-husband of withdrawing the amount of Rs. 46,74,249.50 ps out of the total amount deposited in the account of the applicant with Bank of Baroda to the tune of Rs. 46,74,268.83 ps, during the period from 18.05.2012 to 11.07.2019 and not paying permanent alimony to his wife as per the order of Divorce proceedings shows that the applicant had no intention to pay the amount of maintenance as per the order and as on 1st May 2019, balance amount in the account of the applicant-husband was found at Rs. 19.43 ps. only to recover the amount from the applicant-husband and thus, the intention of the applicant-husband was also clear that he was not happy to pay the amount of maintenance to his wife. Section 11 of the Pension Act 1871 cannot be attracted as the wife cannot be treated as creditor as provided under this provision.

This Court is of the view that the learned Family Court has rightly considered the said aspect and has passed the

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reasoned order which would not require any interference by this court. Therefore, certainly the wife is entitled to claim her maintenance amount from the pension amount received by the applicant-husband, and thus, submissions made by learned advocate for the applicant cannot be accepted by this Court to disturb or set aside the impugned order as sought for.

Hence, present application stands rejected and accordingly, disposed of. Notice is discharged.

(B.N. KARIA, J)

K. S. DARJI