

B.Priya Kumar Vs. B.Sabitha and Another

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Court : Andhra Pradesh

Decided On : Oct-11-2012

Judge : G.Krishna Mohan Reddy

Appellant : B.Priya Kumar

Respondent : B.Sabitha and Another

Advocate for Def. : Sri. P.Nagendra Reddy Counsel, Sri. S.Mujib Kumar Counsel

Judgement :

THE HON'BLE SRI JUSTICE G.KRISHNA MOHAN REDDY CrI.P.No.2934 o

11. 10-2012 B.Priya Kumar B.Sabitha and another Counsel for the petitioner: Sri P.Nagendra Reddy Counsel for Respondent No.1 : Sri S.Mujib Kumar Counsel for Respondent No.2 : Public Prosecutor : ?Cases referred: ORDER 1

This criminal petition is filed under Section 482 Cr.P.C seeking to quash proceedings in CrI.R.P.No.47 of 2008 on the file of the Court of I Additional District Judge, Nizamabad.

2.

The petitioner herein is the respondent in the maintenance case and also in the revision, whereas the first respondent herein is the petitioner in the maintenance case and also in the revision.

For the sake of convenience, the parties herein will be referred to as arrayed in the MC.

3.

The petitioner, who happened to be the wife of the respondent, filed maintenance case under Section 125 Cr.P.C for providing maintenance at the rate of Rs.20,000/- per month against the respondent on the ground that the respondent being the legally wedded husband of her neglected and deserted her without any lawful cause, but it was dismissed, against which the aforesaid criminal revision petition was filed before the District Court by her.

As per the record, the respondent having been served with notice, failed to appear before the Sessions Court, following which he was set ex parte.

Later the petitioner got herself examined as PW1 and got marked Exs.P1 and P2 in consequence of which the Sessions Court allowed the revision petition granting maintenance @ Rs.8,000/- per month with effect from the date of petition in favour of the petitioner mainly on the basis of Ex.P2, a copy of his salary certificate to the effect that he was drawing salary of Rs.52,000/- by 2003 as the Chief Manager of Baroda Bank.

4.

Learned counsel for the respondent submits that in fact the gross salary of the respondent by January 2010 was only Rs.32,097/- and his net salary then was Rs.21,746/-, and that having regard to the same, the amount of maintenance awarded to the petitioner is very high.

He also submits that even otherwise by virtue of Section 399 Cr.P.C, the Sessions Court got no power of recording evidence in revision, particularly when no evidence was recorded in the maintenance case before the enquiry Court.

It is also according to him that the petitioner has got means to maintain herself and unless a full-fledged enquiry is conducted, no justice would be done to him in the matter.

5.

The respondent failed to appear before the Enquiry Court or the Sessions Court having received notices as borne out by the record for which adverse inference is to be drawn against his conduct.

It shows that he had no interest in safeguarding the interest of the petitioner, who is no other than his wife.

This Court can interfere in the matter only when there is gross irregularity in the order under revision.

6.

Under Section 399 Cr.P.C the Sessions Judge has got power to record evidence while entertaining a revision.

Sub Section (1) thereunder clearly contemplates that in the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers, which may be exercised by the High Court under sub-section (1) section 401.

Therefore, under this provision, the Sessions Court is given powers to exercise all or any of the powers which may be exercised by the High Court under sub-Section (1) of Section 401 Cr.P.C.

So section 401 Cr.P.C.

is relevant here.

It contemplates as follows: In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307 and when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by Section 392.

(2) No order under this Section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.

Whereas this Section refers to Sections 386, 389, 380 and 391 Cr.P.C, Section 386 deals with the powers of the Appellate Court, Section 389 deals with the question of suspension of sentence pending the appeal and release of appellant on bail, Section 380 deals with special right of appeal in certain cases and Section 391 deals with the powers of the appellate Court to record necessary evidence in the appeal.

Section 391 reads as under (1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate or when the Appellate Court is a High Court, by a Court of Sessions or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this Section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.

Thereby these provisions are adopted for the purpose of empowering the Sessions Court to record evidence while entertaining a revision under Section 399 Cr.P.C.

In view of the provisions enumerated, it is to be held that the recording of evidence before the revision Court is proper.

Whether it was for recording fresh evidence or recording all necessary evidence that does not make any difference.

The right of recording of evidence includes the right of recording additional evidence also.

Therefore, the contention of the learned counsel for the respondent is not tenable.

It is also contended by the learned counsel for the respondent that the respondent is going to retire and if the order of maintenance continues, he cannot comply with the same later and hence necessary modification or observation may be made.

Having considered the matter thoroughly, I do not find any irregularity in the order passed by the Court below.

Hence, the petition is liable to be dismissed.

In the result, the criminal petition is dismissed observing that if the income of the respondent comes down for any reason, accordingly, he can move an application before the concerned Magistrate Court for modifying the order passed under Section 125 Cr.P.C.

G.KRISHNA MOHAN REDDY,J Dt.11.10.2012