

Are Siva Parvathi and Another Vs. State of A.P.,rep.by Its Public Prosecut

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Court : Andhra Pradesh

Decided On : Dec-21-2012

Judge : B.Seshasayana Reddy

Appellant : Are Siva Parvathi and Another

Respondent : State of A.P.,rep.by Its Public Prosecut

Advocate for Def. : Sri. Naga Praveena Vankayalapti Counsel

Judgement :

THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY Criminal Revision Case No.902 o

21. 12-2012 Are Siva Parvathi and another State of A.P.,Rep.by its Public Prosecutor, Hyderabad and another Counsel for the petitioners : Sri Naga Praveena Vankayalapti Counsel for the respondent No.1 : Public Prosecutror Counsel for the respondent No.2: Sri G.Nageswara Rao : ?CITATIONS:

1. 1998(1) ALT (Crl.) 199 (A.P.) = 1998(2) ALD 61.2 1995(4) Supp (4) S.C.C.

243 ORDER: The petition is directed against the Judgment dated 15.03.2012 passed in C.R.P.No.42 of 2011 on the file of V Additional Sessions Judge (Fast Track Court), Ongole, whereby and whereunder the learned Additional Sessions Judge modified the Order of Additional Junior Civil Judge, Chirala with regard to the effective date of commencement of enhanced maintenance in M.C.No.20 of

2010.

The petitioners are the wife and the son of the 2nd respondent.

The wife and the son filed M.C.No.20 of 2010 under Section 127(2) of Code of Criminal Procedure (for short 'Cr.P.C.') seeking enhancement of maintenance amount.

The learned Additional Junior Civil Judge enhanced the maintenance amount @ Rs.2,000/- to the wife and Rs.1,500/- to the son from the date of petition, by Order dated 03.08.2011.

For better understanding, I may refer the relevant portion of the Order and it is thus: "A reading of this Section would shows that the effect of this Section stands emerged from Section 125 Cr.P.C.

itself.

To my opinion, Section 127 is more or less in continuation of the provisions of Section 125.

The very start of the wording of Section 127 states that 'on proof of a change in the circumstances of any person receiving under Section 125 a monthly allowance, or ordered under the same Section to pay a monthly allowance to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration in the allowance as he thinks fit.' It is not disputed before me that the Order under Section 125, Cr.P.C.

can be made either from the date of the application or from the date of passing of the Order.

In this regard, a discretion has been vested to the Magistrate itself.

Section 127 Cr.P.C.

gives a direction to the Court to decide about the date from which the enhancement is to be granted taking into consideration different factors, such as

the petition for enhancement may take some time for decision; the wife or the child or the parents might have taken loan which they have to repay and other similar circumstances which may show that the order enhancing the maintenance allowance from the date of Order is not just and fair.

Section 127 is to be read as proviso to Section 125(1).

Moreover, the social legislation as contemplated under Section 125 and 127 for the unprivileged, neglected persons and those who are not having income of their own to support themselves, has to be liberally and beneficially construed.

As Section 127 Cr.P.C.

is proviso (2) of Section 125 Cr.P.C.

and this Court got discretion to decide about the date from which enhancement is to be granted taking into consideration different factors.

This Court is of considered opinion that maintenance amount is fit and just to grant from the date of petition and the contention of respondent is overruled.

The 2nd petitioner is entitled for the said enhanced maintenance amount till his attainment of majority only.

In the result, the petition is allowed by granting maintenance amount of Rs.2000/- to the 1st petitioner and Rs.1500/- to the 2nd petitioner from the date of petition.

The 2nd petitioner is entitled for enhanced maintenance till his attainment of majority only.

The respondent is directed to pay the said arrears of maintenance amount till the date of this Order in 15 equal instalments and he is further directed to pay the enhanced maintenance amount from the date of this Order on or before 10th of every succeeding month without fail and the respondent is further directed to pay costs of Rs.1000/- towards costs of this petition.

In case of default in payment, the petitioners are at liberty to execute the same through process of law.

Accordingly, the petition is allowed with costs." The husband carried the matter in revision being C.R.P.No.42 of 2011 on the file of the V Additional District & Sessions Judge (Fast Track Court), Ongole.

The learned Additional Sessions Judge on reappraisal of the material brought on record and relying on the decision of this Court in Pilli Venkanna Vs.

Pilli Nookalamma and another¹ proceeded to modify the Order of the trial court and thereby giving effect to the enhanced maintenance from the date of Order instead of from the date of application, by Judgment dated 15th March, 2012.

Hence, this revision by the wife and the son.

Heard learned counsel appearing for the petitioners (the wife and the son) and learned counsel appearing for the 2nd respondent/husband.

It is contended by learned counsel appearing for the petitioners that it is the discretion of the Court whether to allow the enhanced maintenance from the date of application or from the date of Order as held by the Supreme Court in *Sau Suman Naraya Niphade and another Vs.*

Narayan Sitaram Niphade and another² and therefore, the judgment on which the learned Additional Sessions Judge relied on is no more good in law, in which case the Order passed by the learned Magistrate with regard to the effective date of enhanced maintenance is required to be restored.

Learned counsel appearing for the 2nd respondent/husband by placing reliance on the Judgment of this Court in Pilli Venkanna's case (1 supra), contends that enhanced maintenance amount can be allowed only from the date of Order not from the date of petition.

No doubt, the learned Single Judge of this Court in Pilli Venkanna's case (1 supra) has ruled that the enhanced maintenance can only be made with effect from the date of Order.

However, in view of the Supreme Court judgment in *Sau Suman Naraya Niphade's* case (2 supra), the proposition laid down by the learned Single Judge of this Court is no more good in law.

It has been categorically held by the Supreme Court that it is the discretion of the Court to allow enhanced maintenance from the date of application or from the date of Order.

The learned Junior Civil Judge has assigned valid reasons for granting enhanced maintenance from the date of petition.

The revisional Court relying on the Judgment of the learned Single Judge, which is no more good in law in view of the Judgment of the Supreme Court (2 supra), proceeded to modify the Order of the Junior Civil Judge with regard to the effective date of enhanced maintenance.

In view of the settled position of law, the Judgment impugned in the revision cannot be sustained and accordingly is hereby set aside and the Order passed by the Additional Junior Civil Judge, Chirala in M.C.20 of 2010 stands restored.

Accordingly, the Criminal Revision Case is allowed.

B.SESHASAYANA REDDY, J 21st December,
2012

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