

M.K. Shafiuddin Vs. Halima Khatoon and Others

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Court : Karnataka Gulbarga

Decided On : Feb-01-2013

Judge : Anand Byrareddy

Appeal No. : Criminal Petition No. 7789 of 2012

Appellant : M.K. Shafiuddin

Respondent : Halima Khatoon and Others

Judgement :

(Prayer: This Criminal Petition is filed under Section 482 of the Criminal Procedure, 1973 praying to quash the entire proceedings in CrI.Misc.No.55/2010 on the file of the Family Judge at Raichur.)

The petitioner is said to be the husband of respondent no.1 and respondents 2 and 3 are their children. The petitioner and respondent no.1 are separated. The children are living with respondent no.1. The respondents had filed a petition under Section 125 of the Criminal Procedure Code, 1973 (Hereinafter referred to as the 'Cr.PC', for brevity), seeking maintenance in a sum of Rs.5,000/- per month for herself and a sum of Rs.2,500/- per month for the children, that is respondents 2 and 3, for their maintenance from the date of the petition. The said petition was filed in the year 2010. The petitioner on receiving notice of the same, has appeared therein and has filed his objections. The marriage is admitted and there is no dispute that the children are their own. However, it was alleged by

respondent no.1 that she was being tortured for dowry and unable to bear the torture, she had separated from the petitioner and had instituted proceedings for an offence punishable under Section 498A of the Indian Penal Code, 1890 (Hereinafter referred to as the 'IPC', for brevity) and the same is pending adjudication before the Criminal Court. Respondent no.1 had filed a civil suit in the year 2000 in O.S.No.6/2000 before the Family Court, Raichur, seeking maintenance. That suit was decreed and a sum of Rs.800/- per month was granted to respondent no.1 and a sum of Rs.600/- per month to respondents 2 and 3. In spite of the same, respondent no.1 has now filed the present petition for maintenance, on the footing that the maintenance being paid by the petitioner pursuant to the said decree, is insufficient to maintain herself. The petitioner had challenged the decree granting maintenance in an appeal before this court in MFA 3474/2000 and the same stood dismissed. The petitioner, therefore, contends that the claim for maintenance having attained finality in the suit of respondent no.1 and on behalf of other respondents, having been decreed, the present petition for maintenance is not maintainable. The learned Counsel would submit that if at all, the petitioner ought to seek enhancement of the decretal amount in appropriate proceedings, and that invoking Section 125 of the Criminal Procedure Code, 1973 is impermissible and would be akin to the same being barred as res judicata. It is in this vein that the learned counsel would further plead that the petitioner is unemployed and is unable to sustain himself and since respondent no.1 is an able-bodied woman, she could also earn her own living and the petitioner giving up a lion's share of his earning as maintenance, is hardput to meet any further demand for maintenance and therefore, the proceedings pending before the court of the Family Judge, Raichur in Criminal Mis.55/2010 be quashed.

The limited question is whether the respondents would be entitled to seek maintenance notwithstanding that there is already a decree in their favour for maintenance granted in the year 2000. The contention that the petitioners ought to pursue their remedy by seeking enhancement of maintenance granted in the said suit, may not be a valid suggestion. There is no known procedure, by which, such enhancement could be sought before the trial court or by way of an appeal. In any event, the same having been challenged in appeal by the very petitioner and that having been confirmed, to seek enhancement in those proceedings may not be

possible. It is apparently for this reason that a petition for maintenance under Section 125 of the Cr.PC is filed. From a reading of Section 125 of the Cr.PC, it is clear that it merely prescribes a procedure, by which the wife, children or parents of a person, who are unable to maintain themselves, could approach the court and upon proof of such neglect or refusal, the Court may order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother at such monthly rate as such Magistrate thinks fit. Therefore, to contend that the present petition filed by the respondents is barred on the principle of res judicata may not be tenable. The question would be as to the source of income available to the petitioners therein and whether there was an obligation to maintain them by the respondent, who is the petitioner herein. The fact that there was an earlier suit, which was decreed and that the petitioner pays the maintenance pursuant to the said decree, would only be relevant to the extent of the said amount being taken into account in any further maintenance being granted on the basis of the petition now filed. There is no bar to seek such maintenance, especially, since the decree was of the year 2000 and any court would have to take judicial notice of the lapse of time and the cost of living, in addressing a claim such as the one made by the respondents. Respondents 2 and 3 are aged 17 and 15, respectively, and would necessarily have to meet a larger expense for their education and hence it cannot be said that the petitioner is no longer obliged to pay any further maintenance other than what was decreed in the year 2000. This would make a mockery of the law if the doors of the court should be shut in respect of such a claim for maintenance by the respondents. Therefore, there can be no legal bar for the petition seeking maintenance being filed, notwithstanding an earlier decree for maintenance, which may have attained finality. The sufficiency of the maintenance that is being paid, would be a relevant issue, that may be addressed by the court and any amount paid by virtue of the decree will necessarily have to be taken into account. Beyond this, there can be no bar to the maintainability of the present petition being filed by the respondents.

The issuance of notice to the respondents would cost them dear in having to appear and engage counsel and to contest this petition and hence, the present petition does not merit consideration and is rejected.