

Shiv Kumar Vs. Sunita Devi and Another

Shiv Kumar Vs. Sunita Devi and Another

SooperKanoon Citation : sooperkanoon.com/1152029

Court : Himachal Pradesh

Decided On : Jan-11-2014

Judge : Rajiv Sharma

Appeal No. : Cr.MMO No.4051 of 2013

Appellant : Shiv Kumar

Respondent : Sunita Devi and Another

Judgement :

Rajiv Sharma, J.

1. This petition is directed against the order dated 21.6.2013 rendered by learned Additional Sessions Judge-1 Kangra at Dharamshala in Criminal Revision No.9-P/2012, whereby he has upheld the order dated 21.10.2011 rendered by the learned Chief Judicial Magistrate, Kangra at Dharamshala in Criminal Petition No.47-IV/2008.

2. æKey facts? necessary for the adjudication of this petition are that the marriage between Shiv Kumar (hereinafter referred to as the æpetitioner for the sake of convenience) and Sunita Devi (hereinafter referred to as ærespondent No.1? for the sake of convenience) was solemnized as per Hindu rites at Village Rasan, Tehsil Dharamshala, District Kangra. Out of the wedlock, respondent No.2 Kumari Ashima was born on 15.3.2008. According to respondent No.1, relations between the parties remained cordial for about 3-4 months after marriage. Even when she

was pregnant, petitioner and his family members continued harassment and torment. The doctor had advised her not to do hard work. She was forced to do hard work by the petitioner and his family members. The petitioner even did not accompany her for routine medical examination. She was even forced to sleep on the floor during winter. She was not allowed to use hot water and household articles. On 14.1.2008, she was compelled to leave the matrimonial house along with respondent No.2. On 25.1.2008, her sister-in-law and aunt at the request of her parents accompanied her to the matrimonial house, but the petitioner and his family members took up a quarrel with them and ousted them from the house. After birth of respondent No.2, neither petitioner nor his family members visited respondent No.1. The petitioner has failed to take care of respondents. According to respondent No.1, the petitioner is carpenter by profession and earns about Rs.7000/- - Rs.8000/- per month. Respondent No.1 has no source of income to maintain herself and respondent No.2. Hence, respondents filed a petition under Section 125 Cr.P.C. for grant of maintenance to the tune of Rs.1500/- each per month.

3. The petition was contested by the petitioner. According to him, respondent No.1 stayed for about 2 months in the matrimonial home. She used to leave her matrimonial house without permission of the petitioner. She was never deprived of maintenance. He came to know about the pregnancy of respondent No.1 from his mother-in-law. The petitioner and his family members visited the parental house of respondent No.1 many times, but her parents did not allow them to meet respondent No.1. Respondent No.1 was living in adultery. Respondent No.1 had left the matrimonial house on 26.1.2008. His monthly income was only Rs.2000/-.

4. Learned Chief Judicial Magistrate vide order dated 21.10.2011 allowed the petition and respondent No.1 and respondent No.2 were held entitled to monthly maintenance at the rate of Rs.1500/- and Rs.1000/- respectively from the date of filing of the petition, i.e. 3.5.2008.

5. Petitioner feeling aggrieved by the order dated 21.10.2011 preferred a revision petition before the learned Additional Sessions Judge-I Kangra at Dharamshala, who dismissed the same vide order dated 21.6.2013. Hence, this petition.

6. I have heard learned counsel for the parties and gone through the impugned orders and pleadings carefully.

7. Respondent No.1 Sunita Devi has appeared as PW1. She has reiterated the facts stated in the petition. According to her on 25.1.2008 her sister-in-law and aunt dropped her at her matrimonial house. However, petitioner and his family members took up a quarrel with them. They all were insulted and ousted from the house. PW2, Pramita Devi, sister-in-law of respondent No.1 has deposed that she alongwith her aunt accompanied respondent No.1 to her matrimonial home on 25.1.2008. The petitioner and his family members took up a quarrel and ousted them from the house. Petitioner has categorically admitted in his cross-examination that on 25.1.2008, sister-in-law and aunt of respondent No.1 had visited his house to drop respondent No.1. This fact has also been admitted by RW3 Kishori Lal, father of the petitioner. The petitioner has not led any tangible evidence to establish on record that respondent No.1 was living in adultery. Petitioner has deposed in his examination-in-chief that when the petitioner conceived respondent No.2, respondent No.1 was staying with him. It is duly established on record that respondent No.2 is daughter of the petitioner. The false accusation of the petitioner qua the adulterous life being lived by respondent No.1 amounts to cruelty. Respondent No.1 was forced to leave the matrimonial house during her pregnancy. It has come on record that the petitioner had never accompanied respondent No.1 for medical examination. On the one hand, petitioner has made contradictory statement that he came to know about the pregnancy of respondent No.1 from his mother-in-law, on the other hand, in his examination-in-chief, he has deposed that he came to know about pregnancy of respondent No.1 from some one. The petitioner has failed to disclose the name of that person. Petitioner has projected that he along with his family members had visited the parental house of respondent No.1 after birth of respondent No.2. However, father of the petitioner RW3 Kishori Lal has specifically deposed that neither petitioner nor any member of his family ever visited respondent No.1. RW3 Kishori Lal has categorically admitted that respondent No.1 used to go for medical examination all alone. The petitioner has not taken care of respondent No.1 during her pregnancy. Respondent No.1 has categorically admitted that she and her parents tried their level best to reconcile the matter. However, attitude of the

petitioner and his family members was not good towards respondent No.1 and her family members. Respondent No.1 has not left the matrimonial house voluntarily.

8. Mr. Onkar Jairath, learned Advocate, has vehemently argued that income of the petitioner has been wrongly assessed by the learned Chief Judicial Magistrate. According to him, the petitioner is working as labourer. It has come on record that the petitioner is an able bodied person. He is carpenter by profession. Daily wage of a carpenter is not less than Rs.300/- per day. Learned Chief Judicial Magistrate has correctly assessed the income of the petitioner between Rs.5000/- to Rs.6000/-. The petitioner has not led any tangible evidence to establish on record the earning capacity of respondent No.1. She along with her child is solely dependent upon the income of the petitioner. Respondent No.1 is living separately alongwith her minor child with her parents.

9. In *Kandaswami Moopan vs. Angammal*, AIR 1960 Madras 348, learned Single Judge of Madras High Court has held that the possession of property is not at all the criterion for awarding maintenance. It is independent of possession of property. So long as a man is able-bodied and can work and earn his livelihood, it is his duty to support his wife. Learned Single Judge has held as under:-

œ(6) Then it is argued that the husband is not in flourishing circumstances and that the income got by him would not justify maintenance given by the learned Magistrate. I must first of all point out that it is the settled practice of this High Court not to interfere in revision with the quantum of maintenance which is awarded by Magistrates unless it is so manifestly perverse that it requires interference without any further argument on the subject. Besides, the possession of property is not at all the criterion for awarding maintenance under Sec. 488. It is independent of possession of property. So long as a man is able-bodied and can work and earn his livelihood, it is his duty to support his wife.

Therefore, our Courts have gone to the extent of laying down that, notwithstanding the fact that a husband may be an insolvent or a professional beggar or a minor or is a sadhu or a monk, he must support his wife, so long as he is able-bodied and can eke out his livelihood and support his wife. In fact, in one case which was argued before the Bombay High Court, when a man pleaded that he entered the

holly orders the Bombay High Court said that in such a case he should doff off his orange robes and get employed and earn money in order to support his wife and children.

The case-law on the subject will be found in Dhani Ram v. Mst. Ram Dei, Prabhulal v. Parvatibai, AIR 1952 Madh Bha 96: 1952 Cri LJ 868; Abdul Wahab v. Mt. Sugrabi 37 Cri LJ 86: 159 Ind Cas 120 (Nag); in re, Kandaswami Chetty, AIR 1926 Mad. 346: 27 Cr LJ 350; Kantivijayaji v. Emperor, AIR 1932 Bom 285: 33 Cri LJ 625, and Mohomed Hussein Abdul Kadar v. Emperor, AIR 1940 Bom. 344: 42 Cr. LJ 101. Therefore, we need not make a meticulous inventory of the assets of this husband in order to calculate the exact maintenance which has got to be awarded.

In fact, even under the Hindu law, the obligation to support the wife is a personal obligation which attaches from the moment of marriage. It is independent of possession of property (see Mayne's Hindu Law, 11th edition, page 818). In this case, I have already set out the maintenance awarded by the Magistrate, and in these days of high cost of living it is certainly not unconscionable that an amount of Rs. 20/- per month should be awarded to the wife and Rs. 5/- to each of the two children of this petitioner.?

10. In Chander Parkash Bodh Raj vs. Shila Rani Chander Parkash, AIR 1968 Delhi 174, learned Single Judge of Delhi High Court has held that an able bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. Learned Single Judge has held as under:-

œ(7) But this apart, as submitted by Shri Bhandari, an able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. In the

present case, as the husband has not frankly disclosed to the Court, as he ought, his allowances which he admittedly gets, the presumption would be easily permissible against him.

11. In *Ashish vs. D.C. Tewari*, AIR 1970 Delhi 98, learned Single Judge of Delhi High Court has held that the fact that minor child is living with his mother is not a sufficient cogent ground by itself for refusing him relief by way of maintenance. Learned Single Judge has held as under:-

œ6. It is proper at this stage to reproduce Section 488, Cr.P.C.

"488. Order for maintenance of wives and children - (1) If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-Divisional Magistrate or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

(2) Such allowance shall be payable from the date of the order, or if so ordered from the date of the application for maintenance.

(3) if any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in manner hereinbefore provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made;

Provided that, if such person offers to maintain his wife on conditions of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal sated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

If a husband has contracted marriage with another wife or keeps a mistress it shall be considered to be just ground for his wife's refusal to live with him:

Provided, further that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due.

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favor an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent the Magistrate shall cancel the order.

(6) All evidence under this Chapter shall be taken in the presence of the husband or father, as the case may be or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons-cases;

Provided that if the Magistrate is satisfied that he is willfully avoiding service, or willfully neglects to attend the Court, the Magistrate may proceed to hear and determine the case ex parte. Any order so made may be set aside for good cause shown, on application made within three months from the date thereof.?

12. In *Bhure vs. Gomatibai*, 1981 Cri.L.J. 789, learned Single Judge of Madhya Pradesh High Court has held that imprisonment order can be passed without first issuing distress warrant of levying the amount. Learned Single Judge has held as under:-

œ4. I have considered the arguments pressed before me. On perusal of Sub-section (3) of Section 125 of the Code, it is clear that two remedies are available for the enforcement of the Order:

(1) the issue of a warrant for the levy of the fine under Section 421, Cr. P.C. by attachment and sale of any movable property of the offender and/or a warrant to the Collector empowering him to realise the amount as arrear of land revenue from the movable or immovable property, or both, of the defaulter; and

(2) sentencing the defaulter for the whole or any part of each month's allowance remaining unpaid, to imprisonment for a term extending to one month or until payment if sooner made. Imprisonment is a means of enforcement of payment, and an Order for imprisonment can be passed, only after there has been negligence to pay the maintenance. The material question to be considered is whether such an Order of imprisonment can be passed without, at first, issuing the warrant for levying the amount due. It is, no doubt, true that the normal rule is, at first, to try to seek enforcement of the Order by issuing the distress warrant in the manner provided in the Code for levying fines; but, this rule, in my opinion, is not mandatory, that is, to be necessarily followed in each and every case without considering the attending circumstances of the particular case. In the instant case, it is noticed that despite the passing of the maintenance Order as long back as January, 1976, not a single penny has been paid by the applicant husband to the wife. The Order-sheets of the case equally show that the applicant husband avoided appearance in the Court continuously on several dates of hearing, so much so, that his presence had to be procured, at first by issuing bailable warrant and then, finally by issuing non-bailable warrant against him. The applicant husband had equally resisted the payment of arrears of maintenance amount by levelling flagrant charges of immorality against the non-applicant wife for the particular period before the passing of the maintenance Order. All this was of no avail, since, the learned Magistrate put his foot down on the dilly-dallying tactics of the applicant husband, and rejected his application in the matter of such frivolous allegations. It is equally pertinent to observe that the applicant husband, finally on 30-9-77, refused point blank to make any payment to the wife in the matter of the huge arrears of maintenance amount. Section 125 of the Code has been enacted with the object of enabling the helpless and deserted wife and children to secure the much needed relief. It has a special social purpose behind it to subserve the interest of the weaker sections of society i.e. the women class. The husband, once the maintenance Order is passed against him, cannot be allowed to play hide

and seek by adopting delaying tactics and thus, make the life of 'his deserted wife, miserable and reckless for want of necessary amount to feed herself and her children, if any. The law must subserve the social purpose and the subtle technicalities of law cannot be allowed to stand in the way of help and succour which the wife is entitled to receive by speedy means through the agency of the Court. On scrutiny of the record of the present case, it is noticed that the applicant husband has himself stated that he had no agricultural lands of his own and that he had no other property and that he earned his living only by making bidis. In these circumstances, no useful purposes would have been served by issuing the distress warrant for recovery of the arrears of maintenance amount against him. Issue of such warrant, even if it had been issued, would have been infructuous and would have simply prolonged the agony of the non-applicant wife who is found to just struggling hard to recover the arrears of maintenance for which she has already paid process in the Court from time to time,-- but with no concrete result so far. In these circumstances, the present case, in my opinion, is one where issue of distress warrant was uncalled for and was unnecessary; and as such, the learned Magistrate was right in ordering the imprisonment of the applicant-accused for his default of payment of the particular arrears of maintenance amount. In the particular circumstances of the case, no interference is called for in the revision preferred by such a husband who is callous and heartless and who has been attempting all along, to thwart and flout the Court's Order of maintenance.?

13. In Raibari Behera vs. Mangaraj Behera, 1983 CrL.J. 125, learned Single Judge of Orissa High Court has held that the object of the provision being to prevent vagrancy and destitution, in determining the reasonable quantum of maintenance, it has to be found out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family. Learned Single Judge has explained the words 'Having sufficient means?'. It does not singly only means like estate or definite employment, but also includes capacity to earn money.

Learned Single Judge has held as under:-

œ10. The next question for consideration is as to what would be the reasonable quantum of maintenance to be paid by the opposite party and from which date. What is to be kept in mind while fixing the quantum of maintenance has been laid down by this Court in *Basanta Kumari Mohanty v. Sarat Kumar Mohanty* (1982) 53 Cut LT 53 : 1982 Cri LJ 485 and the same view has been adopted in the case of *Smt. Choti Dei v. Hemanta Kumar Sahu* (1982) 54 Cut LT 36 : 1982 Cri LJ NOC 173. The object of the provision being to prevent vagrancy and destitution, it has to be found out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family. The needs and requirements of the wife for a moderate living, the earnings of the husband and his capacity to earn and his commitments are relevant factors while determining the quantum of maintenance. In the instant case, the evidence from the side of the petitioner was that the opposite party was possessed of about seven acres of landed property and had sufficient means to maintain the petitioner, while the opposite party, by the evidence from his side and on the basis of Ext. A the record of rights wanted to establish that there had been partition between him and his two brothers of the 4.81 acres of land recorded in Ext. A and that he had been in possession of about one and a half acres of land. The opposite party was certainly an able-bodied person capable of maintaining the petitioner. The word "means" does not signify only means like estate or definite employment, but also includes capacity to earn money. If a man is healthy and able-bodied, he must be taken to have means to support his wife and children and he cannot take the plea of not having sufficient means. A person has sufficient means if he has capacity to earn. Notwithstanding the fact that a husband is an insolvent or a professional beggar or a minor or a monk, he must support his wife so long he is able-bodied and can eke out his livelihood (See the case of *Basanta Kumari Mohanty v. Sarat Kumar Mohanty* 1982 Cri LJ 485 (supra). The word "means" does not imply only visible means. It includes a capacity to earn. A person who is fit to earn his livelihood cannot be relieved of his liability under the section even if he is young and unemployed, as has been laid down by this Court in *Smt. B. Veragam v. Manoranjan Samanta Kumar* ILR (1963) Cut 415 : (1963) 29 Cut LT 584. Judicial decisions are unanimous that the expression "means" occurring in Section 488 of the Code (old) (corresponding to Section 125 of the

present Code) does not signify only visible means, such as, real property or definite employment and that if a man is healthy and able-bodied, he must be held to possess the means to support his wife and children and he cannot be relieved of his obligation on the ground that he is unemployed. The opposite party, having sufficient means, has neglected and refused to maintain the petitioner.?

14. In *Durga Singh Lodhi vs. Prembai and ors.*, 1990 Cr.L.J. 2065, learned division bench of Madhya Pradesh High Court has held that mere absence of visible means or real estate will not entitle such a person to escape the liability to pay maintenance. Learned division bench has also held that an able bodied healthy person capable of earning must be subjected to pay maintenance allowance. If such a person avoids to discharge that obligation despite issuance of distress warrant, he can be sentenced to imprisonment.

15. In *Jupally Veeraswamy vs. Jupally Shantamma*, 1996 Cri.L.J. 3209, learned Single Judge of Andhra Pradesh High Court has held that where a revision against an order deciding quantum of maintenance was dismissed, a petition under Section 482 Cr.P.C. would not be maintainable. Learned Single Judge has held as under:-

œ3. Aggrieved by the said order in the revision, this petition under S. 482, Cr.P.C. to quash the order of the lower Court is filed. The learned counsel appearing for the respondents herein submitted that by virtue of S. 399(3), Cr.P.C., no further proceedings by way of revision at the instance of such person shall be entertained by the High Court or any other Court. Therefore, the petitioner herein having failed in the revision before the Sessions Judge cannot file this proceeding under S. 482, Cr.P.C.

5. I see considerable force in the submission of the learned counsel for the respondents. The petitioner herein had failed in the revision filed by him before the Sessions Court. Ordinarily, no further proceedings are maintainable by virtue of the above mentioned judgments. However, learned counsel for the petitioner brought to my notice a judgment of my learned brother justice V. Rajagopala Reddy reported in *D. Lakshmana Rao. v. E. Kamala Bai* (1996) 1 Andh LT (Cri) 29. In this case he considered the scope of the judgment of the Supreme Court in

Ganesh Narayan Hegde v. S. Bangarappa . In that case the Supreme Court held (at p. 2938 of Cri LJ) :-

"While it is true that availing of the remedy of the revision to the Sessions Judge under S. 399 does not bar a person from invoking the power of the High Court under S. 482, it is equally true that the High Court should not act as a Second Revisional Court under the garb of exercising inherent powers. While exercising its inherent powers in such a matter it must be conscious of the fact that the learned Sessions Judge has declined to exercise his revisory power in the matter. The High Court should interfere only where it is satisfied that if the complaint is allowed to be proceeded with, it would amount to abuse of process of Court or that the interests of justice otherwise call for quashing of the charges."

8. In the case on hand, both the Courts considered the quantum to be granted. They have given certain amounts to the respondent. The present revision is certainly an attempt to convert this Court as a Secondary Revisional Court. Such attempt cannot be allowed to fructify. There is no abuse of process of Court. Therefore, this Court cannot interfere while exercising powers under S.482 of the Code of Criminal Procedure.

16 In Laxminarayan Patnaik vs. Saudamini Patnaik, 1993 Cri.L.J. 227, learned Single Judge has held that when the intention of legislature is apparent in the Criminal Procedure Code that an order under Section 125, Cr.P.C. can only be revised once in a proceeding for revision and no second revision is provided, then a petition under Section 482 Cr.P.C. praying to revise the order passed by revisional Court is not maintainable.

Learned Single Judge has held as under:-

œ7. The petitioner in this Criminal Misc. Case preferred under Section 482, Cr. P.C. has prayed to revise the impugned order passed by the learned Addl. Sessions Judge in Criminal Revision preferred against the order passed by the learned S.D. J.M. to meet the ends of justice. When the intention of the legislature, is apparent in the Criminal Procedure Code that an order under Section 125, Cr. P.C. can only be revised once in a proceeding for revision and no second revision

is provided, such a petition under inherent power is not maintainable. While dismissing the instant case as not maintainable, I also indicate that the impugned order otherwise is not to be interfered with as devoid of any merit. Criminal Misc. case is dismissed but there shall be no order as to costs.?

17. In Kola Keshava Reddy vs. Kola Anantha Lakshmi, 1997 Cri.L.J. 933, learned Single Judge of Andhra Pradesh High Court has held that once the revision is dismissed by the learned Sessions Court, second petition under Section 482 Cr.P.C. was not maintainable. Learned Single Judge has held as under:-

8. In the case on hand, both the Courts considered the quantum to be granted. They have given certain amounts to the respondent. The present revision is certainly an attempt to convert this Court as a Secondary Revisional Court. Such attempt cannot be allowed to fructify. There is no abuse of process of Court. Therefore, this Court cannot interfere while exercising powers u/S. 482 of the Code of Criminal Procedure.

18. In Mast Ram vs. Shanti Devi, 2002 Cri.L.J. 1616, learned Single Judge of this Court has held that concurrent findings of trial court and revisional Court that wife does not possess means to maintain herself and that petitioner-husband is not maintaining her, merits of such findings cannot be gone into under Section 482 Cr.P.C. or under Article 227 of the Constitution of India, which has very narrow scope. Learned Single Judge has held as under:-

œ7. As is evident from the petition itself, the petitioner intends to invoke the jurisdiction of this Court under Section 482 of the Code and Article 227 of the Constitution of India with the aid of Sections 397 and 401 of the Code. The petitioner having already availed himself of the remedy of criminal revision under Sections 397/401 of the Code is debarred from preferring a second revision in view of the provisions of Sub-section (2) of Section 397 of the Code, therefore, the question arises whether there is anything in this petition which may render it maintainable under Section 482 of the Code and Article 227 of the Constitution?

8. Be it stated that there are concurrent findings of two Courts below that the respondent does not possesses means maintain herself and that the petitioner is

not maintaining her. Evidently, the merits of such findings cannot be gone into under the provisions of Section 482 of the Code and Article 227 of the Constitution which has a very narrow scope. The powers of this Court sought to be invoked, can be exercised only in the rarest of the rare cases where grave injustice is shown to have been caused and requires to be undone.

9. In fact there is nothing in the dispute and the impugned orders which may be called or termed as illegality which was resulted in gross injustice to the petitioner or which may call for interference of this Court to prevent abuse of the process of the Court or to secure the ends of justice or to give effect to any order under the Code. Thus, there is no case to invoke the powers of this Court under Section 482 of the Code or/and Article 227 of the Constitution.

10. The present petition in fact is nothing more than a second revision-petition which is not maintainable in view of the provisions of Sub-section(2) of Section 397 of the Code.?

19. In *Asit Baran Mukherjee vs. Fuleswari Mukherjee*, 2003 Cri. L.J. 1344, learned Single Judge of Calcutta High Court has held that provisions of Article 227 of the Constitution of India cannot be used as substitute to Section 397(2) or Section 482 Cr.P.C. to assail the proceedings under Section 125 Cr.P.C.. Learned Single Judge has held as under:-

œ5. At the very outset, the learned advocate appearing on behalf of the opposite party-wife before me has challenged the legal maintainability of this revisional application on the ground that the finding of fact by both the courts below being concurrent, there cannot be any scope for the petitioner to prefer any such second revisional application challenging the said concurrent findings of fact. This contention of Mr. Bhattacharjee can hardly be furnished aside. Under Section 397(2) of Cr. P. C. a second revision is not permissible particularly when both the courts below have pronounced the same findings of fact and the aggrieved petitioner has come to this court for the second time. A petition under Article 227 of the Constitution of India has a limited compass. Article 227 of the Constitution should not be taken as a universal panacea to be applied in cases where the revisional application under Section 397 Cr. P. C. is not tenable under the law. The

conditions for applying this particular provision of the Constitution touching the power of general superintendence of this court over the performance of the inferior courts are settled by the Apex Court in a large variety of cases and the principles which have been enunciated are that the provisions of this Article can be attracted where there are errors apparent on the face of the record or where there are violation of principles of natural justice or there are errors which are so gross and flagrant that intervention of the court is called for or the impugned order suffers from perversity or the order is founded on a misreading of the evidence or on the basis of no material at all. In these limited number of situations the provisions of Article 227 of the Constitution of India can be attracted and it cannot be used as a substitute for Section 397 or Section 482 of the Criminal Procedure Code.

6. In the present case, as it will be clear enough, there is no such error apparent, on the face of the record or perversity in the matter of drawing of the conclusions by the court below or it is also not the case that the findings of the courts below were due to misreading of the evidence on record or they are founded on no material at all. That being the position, it will not be permissible for this court to scan the evidence just like an ordinary appellate or criminal court and to ascertain whether the courts below were justified in drawing the conclusions from the evidence. Therefore, I find sufficient substance in the contention advanced by the learned advocate for the opposite party that this application under Article 227 of the Constitution of India is not legally maintainable at all, the provisions of that Article being not attracted to such a situation.?

20. In *Shail vs. Manoj Kumar and ors.*, (2004) 4 Supreme Court Cases 785, their Lordships of Honble Supreme Court have held that if convinced of genuineness of case that a deserted person, repeatedly knocking at its doors, is on verge of destitution, High Court itself has jurisdiction to direct suitable amount of maintenance and to secure compliance with its direction if subordinate court has failed to grant or to enforce the same relief. Their Lordships have held as under:-

œ3. In *Surya Dev Rai v. Ram Chander Rai and Ors.*, this Court has held that in exercise of power of superintendence conferred under Article 227 of the Constitution of India on the High Court, the High Court does have power to make

such directions as the facts and circumstances of the case may warrant, may be, by way of guiding the inferior Court or Tribunal as to the manner in which it would proceed hence and the High Court has the jurisdiction also to pass itself such a decision or direction as the inferior Court or Tribunal should have made. The jurisdiction under Article 227 of the Constitution is to be exercised sparingly and with care and caution, but is certainly one vesting in the High Court and meant to be exercised in appropriate cases. If convinced of the genuineness of the averments made by the petitioner and if convinced that a deserted woman, repeatedly knocking at its doors, is on the verge of destitution the High Court itself has jurisdiction to direct suitable amount of maintenance being awarded and to secure compliance with its directions, if the same relief the subordinate Court has failed to grant or to enforce. May be that the High Court could have passed such order on the next date of hearing. But the petitioner has approached this Court probably impelled by impatience.?

21. Respondent No.1 has led sufficient evidence to prove that petitioner is not maintaining her and her minor child. She is legally wedded wife of petitioner. Learned Chief Judicial Magistrate, Kangra, has rightly granted maintenance of Rs.1500/- per month to respondent No.1 and Rs.1000/- per month to respondent No.2 per month after taking into consideration the entire evidence adduced by the parties. There is no perversity or any illegality in the impugned order dated 21.10.2011 rendered by the learned Chief Judicial Magistrate, which has been upheld by learned Additional Sessions Judge-1 vide order dated 21.6.2013.

22. Accordingly, in view of the observations and discussion made hereinabove, there is no merit in the petition and the same is dismissed. The pending application(s), if any, also stands dismissed. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com