

Abdul Rasheed vs Ruksana

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Court : Kerala

Decided On : Sep-26-2022

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : RPFC/9/2022

Appellant : Abdul Rasheed

Respondent : Ruksana

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
MONDAY, THE 26TH DAY OF SEPTEMBER 2022 / 4TH ASWINA, 1944
RPFC NO. 9 OF 2022 AGAINST THE ORDER DATED 28.10.2021 IN
MC NO.256/2017 OF FAMILY COURT, TIRUR REVISION
PETITIONER/RESPONDENT: ABDUL RASHEED, AGED 32 YEARS,
S/O.KUNHI MUHAMMED, CHALANA, KANDAMKULAM, METHALA,
AYAPPALLI HOUSE, CHENADAN KULAMBU, NEAR PALLIKKARA-
MADRASSA, KAREKKAD POST, MELMURI AMSOM, TIRUR TALUK,
MALAPPURAM DISTRICT-676 553. BY ADVS. DEEPA NARAYANAN
K.SUJAI SATHIAN ASHA MARIAM MATHEWS MARY LIYA SABU
RESPONDENTS/PETITIONERS : 1 RUKSANA, AGED 29 YEARS,

D/O.MUSTHAFA, UZHITHARATH PALLIYALIL HOUSE, EDAYOOR POST, EDAYOOR VILLAGE, TIRUR TALUK, MALAPPURAM DISTRICT-676 552. 2 MUHAMMED RASAL (MINOR), 8 YEARS, S/O.ABDUL RASHEED, REPRESENTED BY NEXT FRIEND RUKSANA, AGED 29 YEARS, D/O.MUSTHAFA, UZHITHARATH PALLIYALIL HOUSE, EDAYOOR POST, EDAYOOR VILLAGE, TIRUR TALUK, MALAPPURAM DISTRICT-676552. BY ADVS. NIRMAL V NAIR M.ANEESH(K/888/2009) THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 19.09.2022, THE COURT ON 26.09.2022 DELIVERED THE FOLLOWING: -:2:-

ORDER

This revision petition arises out of order in M.C.No.256 of 2017 dated 28.10.2021 on the file of the Family Court, Tirur and the revision petitioner is the respondent in the above M.C. Respondents herein are the petitioners in the above M.C., who are wife and minor 8 years old child of the revision petitioner.

2. Heard the learned counsel for the revision petitioner as well as the learned counsel for the respondents.

3. In this matter, the learned Family Court

Judge tried this M.C. along with the connected original petitions filed by the parties in this M.C. and finally, on appreciation of evidence, the Family Court granted Rs.3,000/- per month as the maintenance to the first petitioner and Rs.2,250/- per month to the second -:3:- petitioner from the date of the petition. While assailing the said verdict, it is submitted by the learned counsel for the revision petitioner that the amount of maintenance granted by the Family Court is exorbitant and no evidence adduced by the original petitioners to prove the income of the revision petitioner.

4. It is submitted further that the first

respondent is leading an immoral and adulterous life and therefore, she does not deserve maintenance. Further, the revision petitioner has been working as a daily

wage employee at a textile shop and therefore, he could not pay the huge sum.

5. In this matter, the original petitioners, the

wife and minor child who was aged 4 years at the time of filing the petition raised contention that they did not have any means to maintain themselves and the respondent being the legally wedded husband of the first petitioner and -:4:- father of the minor petitioner is bound to maintain them. Accordingly, Rs.15,000/- and Rs.10,000/- each towards maintenance to the petitioners 1 and 2 were pressed into before the Family Court.

6. The revision petitioner, who is the

respondent in the M.C., filed objection alleging adulterous life by the first petitioner. However, in the objection, nothing stated to the effect that the petitioners are capable of maintaining themselves and the first petitioner is having sufficient job or income. Similarly, the revision petitioner not stated anything in the objection as regards to his job or income or his incapacity to pay the amount.

7. It is at this juncture, the learned Family

Court appraised the evidence and granted the above sum. Though the insufficiency of income or incapacity of the respondent to pay maintenance to the petitioners were not stated in the objection, during evidence, he stated that he -:5:- was working in a shop. The petitioners would contend that the respondent had been doing business and was earning Rs.30,000/-. Thus, it appears that the learned Family Court Judge found that the income of the respondent is more than Rs.30,000/- per month (he admitted his income to the tune of Rs.30,000/- per month). This is the evidence relied on by the learned Family Court Judge granted Rs.3,000/- and Rs.2,250/- each as maintenance to the petitioners and 4 years old child at the time of the petition.

8. It is the settled law that power of revision

available to this Court under Section 401 of Cr.P.C r/w Section 397 is not wide and exhaustive to re-appreciate the evidence to have a contra finding. In the decision

reported in [(1999) 2 SCC 452 : 1999 SCC (Cri) 275], State of Kerala v. Puttumana Illath Jathavedan Namboodiri, the Apex Court, while considering the scope of the revisional jurisdiction of the High Court, laid down the following principles (SCC pp. 454-55, para 5): -:6:-

5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the

aforsaid standpoint, we have no hesitation to come to the conclusion

that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ...

9. In another decision reported in [(2015) 3 SCC

123 : (2015) 2 SCC (Cri) 19], Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, the Apex Court held that the High Court in exercise of revisional jurisdiction shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the -:7:- ground that another view is possible. Following has been laid down in para.14 (SCC p.135) :

14. ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 Cr.P.C is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaring unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.

10. The said ratio has been followed in a latest

decision of the Supreme Court reported in [(2018) 8 SCC 165], Kishan Rao v. Shankargouda. Thus the law is clear on the point that the whole purpose of the revisional jurisdiction is to preserve power in the court to do justice in accordance with the principles of criminal jurisprudence and, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own

conclusion on the same when the evidence had already

been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the court which would otherwise tantamount to gross miscarriage of justice. To put it otherwise, if there is non-consideration of any relevant materials or fundamental violation of the principle of law, then only the power of revision would be made available.

11. Having considered the living standard now

prevailing and the economic index, I have no hesitation to hold that the Family Court granted only a nominal sum towards maintenance and the said amount of compensation is not liable to be interfered in any manner by exercising the power of revision and therefore, the revision must fail. -:9:- In the result, this revision petition fails and it is, accordingly, dismissed. Sd/- A. BADHARUDEEN JUDGE rkj -:10:- APPENDIX PETITIONER(S)' ANNEXURES : ANNEXURE A1 : RECEIPT FOR THE PAYMENT DATED 16.02.2022. ANNEXURE A2 : RECEIPT FOR THE PAYMENT DATED 05.08.2022. RESPONDENT(S)' ANNEXURES : NIL

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