

ismsil Sheriff Vs. Nasarin

ismsil Sheriff Vs. Nasarin

SooperKanoon Citation : sooperkanoon.com/373625

Court : Karnataka

Decided On : Aug-27-1963

Reported in : 1964CriLJ458

Judge : H. Homba Gowad, J.

Appellant : ismsil Sheriff

Respondent : Nasarin

Advocate for Pet/Ap. : Sri. Rangaswami

Judgement :

ORDER

H. Homba Gowad, J.

1. This revision petition is directed against the order of the City Magistrate, Mysore in Criminal Miscellaneous No. 5 of 1962 directing the petitioner to pay a sum of Rs. 20/- per month towards the maintenance of the respondent.

2. One Khairunnisa, the wife of the petitioner, filed an application tinder Section 488 of the Code of Criminal Procedure claiming maintenance for herself and her daughter, the present respondent who was 3 minor at the time of the petition, against the present petitioner. She alleged that the petitioner had neglected to maintain them and therefore, it is necessary that he should be directed by the

Court to pay maintenance to both of them. The petitioner resisted the application. In his objection statement, he contended that he had divorced Khairunnisa long before the petition was filed by her and therefore, she was not entitled to claim any maintenance from him Under Sub-clause (1) of Section 488 of the Code of Criminal Procedure and the petition was liable to be dismissed.

As regards the claim of the respondent he contended that he was prepared to take her into his custody and maintain her and denied that she had been neglected by him. He further contended that the respondent was capable of maintaining herself without any help from him and therefore she was not entitled to claim maintenance.

The learned Magistrate who recorded the evidence adduced by the parties, held that the petitioner had divorced Khairunnisa long before she filed the petition for maintenance and negated her claim for maintenance. As regards the claim of the respondent Nasarin, who is admittedly the daughter of the petitioner, the learned Magistrate rejected the objections raised by the petitioner and held that she was entitled to claim and get maintenance from the petitioner, and taking into consideration the incurred of the petitioner and several other circumstances, he held that a sum of Rs. 20/- per month is fair and reasonable amount that should be paid by the petitioner towards the maintenance of the respondent and ordered accordingly. It is the legality and correctness of this order; that is challenged in this revision petition,

3. It is urged by Sri Rangaswami the learned Counsel for the petitioner, that the claim of the respondent for maintenance after she attained the age of 18 years cannot at all; be supported Under Section 488 of the Code of Criminal Procedure. In other words. he argues that the respondent was entitled to claim and get maintenance from the petitioner upto the date she attained majority and that since she is now over 18 years of age, she is not entitled to claim and get any maintenance by him Under Section 488, Cr.PC and therefore, the order passed by the learned Magistrate directing the petitioner to pay maintenance to her at the rate of twenty rupees per month even after she attained majority is illegal and cannot be supported. Mr. Rangaswami Iyengar further contends that the

respondent was entitled to claim and get maintenance from the petitioner from' the date of the petition upto she attained the age of majority, i. e., 18 years only and not thereafter as she ceased to be a 'child'.

In support of his contention he relied upon several High Courts which have taken the view that the word 'child' in Sub-clause (1) of Section 488, Cr.PC means a person who has not attained the age of majority and that a boy or a girl who crossed the age of 18 ceased to be a child for the purpose of claiming maintenance Under Section 488 of the Code of Criminal Procedure. There is sharp cleavage in the judicial opinion on the question as to whether the word 'child' used in Sub-clause (1) of Section 488 of the Cr.PC means a person who is under the age of: 18 or who has not attained majority. Some High Courts have taken the view that the word 'child' used in Sub-clause (1) of Section 488 means a boy or a girl who is below 18 years of age. Some other High Courts have taken the view that there is no justification, whatsoever, to hold that the word 'child' used in the said sub-clause has any reference to the age of the boy or girl and that it only means the 'offspring' of the person from whom maintenance is claimed and it has reference only to the question whether the child is capable of maintaining himself or herself.

The word 'child' has not been defined in the Code of Criminal Procedure. Age appears to have been purposely omitted in Section 488 of the Code of Criminal Procedure. There is therefore, no justification to interpret the word 'child' in Sub-clause (1) of Section 488 of the Code of Criminal Procedure to mean a child below 18 years of age. I am of the opinion that age is pure purposely omitted from the section because the object of the Legislature was to provide maintenance as long as the son or the daughter is not capable of maintaining himself or herself. I am, therefore, inclined to agree with the view taken by the learned Judges of the several High Courts that the word 'child' means only offspring of a person from whom he or she claims maintenance and has nothing to do with the age. The relevant point for consideration Under Section 488 (1), Cr.PC is whether the child is capable of maintaining himself or herself without the aid from the father and it has nothing to do with the age.

If really the Legislature intended that the word 'child' in Sub-clause (1) of Section 488, Cr.PC would have reference only to a boy or a girl below the age of 18 years nothing prevented the Legislature for making it quite clear. As rightly pointed out by some of the learned Judges the Legislature should have made it clear by saying 'minor child'. The fact that the Legislature has not done so and has instead used the word child used in Sub-clause (1) of Section 488, Cr.PC supports the view that the Legislature did not intend to restrict the application of this provision to a boy or a girl below the age of 18 years. The first contention of Sri Rajagopalaswami Iyer is, therefore rejected.

4. The next contention urged by the learned counsel for the petitioner is that in the absence of any proof that the petitioner neglected to maintain the respondent, the learned Magistrate had no justification to direct the petitioner to pay her maintenance. He urged that in spite of the fact that the petitioner offered to maintain the respondent in his house, she refused to accept the offer made by the petitioner to join him and therefore, she had no right to claim separate maintenance. It is also contended by Mr. Rangaswami Iyer that there is some material on record to indicate that Khairunnisa the mother of the respondent who is the divorced wife of the petitioner, is in occupation of a premises belonging to the petitioner and has been collecting rents from the tenants who are in occupation and that it is out of that rent so realised that she has been maintaining the respondent and therefore it is not a case where the petitioner has neglected to maintain the respondent to induce the Court to award maintenance Under Section 488, Cr.PC. It is also urged by Mr. Rangaswami Iyer that in the absence of any finding by the learned Magistrate that the offer made by the petitioner to take the respondent to his custody and protect her is not bona fide, there was absolutely no justification for the learned Magistrate to award separate maintenance to the respondent.

It is in evidence that the respondent has been living with her mother and separately from the petitioner for the last 12 years. It is also in evidence that the respondent is taking her education and is now studying in the Medical College. No evidence worth the name has been let in by the petitioner to show that he contributed some money towards the education of the girl at any time during the last 12 years.

during which she; has been living separately from him and with her mother. This circumstance clearly indicates that the effort made by the petitioner for the first time in his objection statement that he was ready and willing to takes the respondent to his custody and protect her, is not a bona fide one. it is in evidence that the Petitioner has taken a second wife and has been living with her and her children away from the respondent and her brothers, for the last 12 years. I am therefore, unable to accept the contention of Mr. Rangaswami Iyengar that the learned Magistrate acted illegally in holding that the offer made by the petitioner to maintain) the respondent if she joined him is not bona find and is advanced for the purpose of getting rid of the claim made by the respondent.

5. As regards the quantum of maintenance awarded by the learned Magistrate, it is in evidence that the petitioner received a large sum of money at the time of his retirement from service and is getting pension of Rs. 117 per month. It is therefore, clear that the sum of Rs. 20 awarded by the learned Magistrate towards the maintenance of the respondent is not excessive. No other ground is urged on behalf of the petitioner. The petition must, therefore, fall.

6. In the result, therefore, for the reasons stated above, this petition fails and the same is dismissed. There will be no order as to costs.