

Kantappa Vs. Sharanamma

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SooperKanoon Citation : sooperkanoon.com/375287

Court : Karnataka

Decided On : Jun-10-1965

Reported in : AIR1967Kant81; AIR1967Mys81; (1966)2MysLJ767

Judge : C. Honniah, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 488, 488(1) and 488(3)

Appeal No. : Criminal Revn. Petn. No. 82 of 1965

Appellant : Kantappa

Respondent : Sharanamma

Advocate for Pet/Ap. : K. Jagannatha Shetty, Adv.

Judgement :

1. The petitioner was ordered by the Munsiff Magistrate of Bhalki to pay maintenance of Rs. 20 per month to his wife the respondent. The petitioner failed to comply with this order. The wife made an application under Section 488(3) of the Code of Criminal Procedure stating that the petitioner had failed to pay maintenance as ordered by the court for one year from 2nd August 1962 to 2nd August 1963. The petitioner's counsel filed an application requesting the court to grant two months' time to make the payment. This application was opposed by the wife on the ground that in spite of the warrant issued by the Court, he had evaded

payment. The Magistrate refused to grant time to the petitioner and passed the following order :

'Respondent's application for time is rejected. He should be kept in the prison till he pays the entire arrears standing due. He is committed to prison.'

Against this order a revision petition was filed in the court of Session at Bidar in Criminal Revision Petition No. 26/6 of 1964. The learned Sessions Judge dismissed the petition. The petitioner then preferred this revision petition.

2. It is contended by Mr. Jagannatha Shetty, the learned counsel for the petitioner, that the Magistrate was wrong in rejecting the prayer of the petitioner for grant of time to pay the arrears of maintenance and he was not right in passing an order directing imprisonment to the petitioner without specifying the period. Section 488 of the Code of Criminal Procedure provides :

'488(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 herein before 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 condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated 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 become due.

3. The relevant provision for the purpose of this case is Sub-section (3). Sub-section (3) refers to the enforcement of the order passed under Sub-section (1). The words 'fails without sufficient cause' were substituted for 'Willfully neglects' by Act 18 of 1923 as the interpretation of the latter words led to difficulties. The legislature has deliberately used this expression obviously intending that the Magistrate before whom the matter comes up should be in a position to use his judicial discretion having regard to all the circumstances and that such judicial discretion should not be fettered or limited by any definite rules. Now non-payment without sufficient cause is sufficient.

4. The petitioner has not given any reason why he failed to pay the maintenance for a period of one year. As a matter of fact, it is seen, he evaded the warrant for a considerable length of time. When he was brought before the Court under a warrant, he requested the Court to grant him time to pay. Taking into consideration the conduct of the petitioner, the learned Magistrate was right in not granting time. The contention of Mr. Jagannatha Shetty, that the order of the Magistrate directing the petitioner to be kept in prison till he pays the entire arrears standing due without specifying the period of imprisonment is wrong, has considerable force. Sub-section (3) confers two independent powers on the Magistrate, (1) to issue a warrant and (2) to sentence the person also. The power to sentence is not dependent on the issue of warrant. The power is in respect of the whole or any part of each month's allowance remaining unpaid to sentence a person for a term not exceeding one month. A person against whom an order for maintenance is

passed under Section 488 Cr. P. C. can be committed to prison for a term amounting to the whole or any part of each month's allowance remaining unpaid after the execution of the warrant. The Magistrate is empowered to sentence a person who has defaulted any payment of maintenance to imprisonment for it period of one month in respect of each month's default. In other words, where arrears have been allowed to accumulate, the Court can issue one warrant and impose a cumulative sentence of imprisonment. But the Court cannot imprison the petitioner for an unspecified period.

5. Mr. Jagannatha Shetty referred to a Full Bench decision of the Bombay High Court in Karson Ramji Chawda v. State of Bombay, : AIR1958 Bom99 (FB). The facts of that case were that the petitioner (husband) was ordered by the Magistrate to pay maintenance to his wife amounting to Rs. 30 per month and maintenance to his daughter amounting to Rs. 25 P. M. The husband made a default and failed to comply with the order. The wife made an application that there had been a default in the payment for four months. The Magistrate issued a warrant and the warrant could not be executed as the husband had no property. The wife then filed an application under Section 488(3) and on that application the Magistrate passed an order sentencing the husband to be imprisoned for a term of 15 days in respect of each month for which the allowance remained unpaid. The sentence was challenged on the ground that in passing the sentence for two months, the Magistrate exceeded the jurisdiction conferred upon him under Section 488(3). Their Lordships held :

'Sub-section (3) of Section 488 confers upon the Magistrate two independent powers, one to issue a warrant which has to be executed in the manner laid down in the sub-section and the other to sentence the person also in the manner laid down in the sub-section. The power of the Magistrate to sentence the person failing to comply with the order is not dependent upon the issue of the warrant, or in other words the issue of the warrant is not a condition precedent to the jurisdiction of the Magistrate to sentence the applicant. Therefore when so read it is clear that the power to sentence is 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. These

words clearly laid down the power of the Magistrate. The power of the Magistrate is in respect of whole or any part of each month's allowance remaining unpaid to sentence the person for a term not exceeding one month'. Their Lordships further held that the order passed by the Magistrate sentencing the husband to be imprisoned for a term of 15 days in respect of each month, for which the allowance remained unpaid, was right.

6. The learned counsel for the petitioner also relied upon a Full Bench decision of the Allahabad High Court in *Emperor v. Beni*, AIR 1938 All. 386. In that case it was held:

'The intention of the Legislature was to empower the Magistrate after execution of one warrant only to sentence a person, who has defaulted in the payment of maintenance ordered under Section 488, to imprisonment for a period of one month in respect of each month's default. The section does not enjoin that there should be a separate warrant in respect of each term of imprisonment for one month. In other words, where arrears have been allowed to accumulate, the court can issue one warrant and impose a cumulative sentence of imprisonment'.

It is therefore clear that the maximum imprisonment that can be imposed will then be one month for each month's arrears and if there is a balance representing the arrears for a portion of a month a further term of one month's imprisonment may be imposed for such arrear. The Magistrate acting under this section cannot direct the defaulting husband to imprisonment for an unspecified period. He has got to compute the term of imprisonment with reference to each month's default and then pass a cumulative sentence. The order in question is not in compliance with the provisions of Section 488(3) and therefore it is liable to be set aside. Accordingly I set aside the same.

7. In the result, this petition is allowed and the case is remanded to the Magistrate to proceed with the case and dispose of the same in the light of the the above observation.

8. Petition allowed.