

Devaki Vs. Deeda S. Putran

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Court : Karnataka

Decided On : Apr-13-1972

Reported in : 1973CriLJ294

Judge : D. Noronha, J.

Appellant : Devaki

Respondent : Deeda S. Putran

Judgement :

ORDER

D. Noronha, J.

1. The petitioner filed M.C. No. 148 of 1970 before the Additional First Class Magistrate Bangalore against her father the respondent, under Section 488(3) Criminal Procedure Code, claiming arrears of maintenance at Rs. 20/- per month in execution of the order in M.C. No. 27 of 1964 of that Court, dated 23.6.1965. Her claim was for the period 24.10.1969 to 23.11.1970. The respondent filed a written statement resisting the application. The learned Magistrate dismissed the application. In this Revision the petitioner assails that order.

2. The only material we have is the petition dated 8.12.1970 and the written statement dated 17.3.1971. The petitioner did not seek to file a reply. Neither side desired to adduce evidence.

3. The contentions of Sri V.G. Vasantha Kumar, learned Advocate of the petitioner, that the court below ought to have taken the initiative for evidence being adduced, and that there is no provision in the Criminal Procedure Code for a reply being filed, are propositions which have to be stated only to be rejected. I, however, agree with him that the learned Magistrate was not justified in having recourse to Section 489(2) Cr.P.C. and also in speculating on the means of the respondent. Even eschewing these two items, the resultant position remains the same as contended by Sri P. Ramachandra Rao respondent's learned Advocate.

4. In the petition, the age of the petitioner is not mentioned. It is also not stated that she is unable to maintain herself. In the respondent's written statement it is specifically alleged that the petitioner attained majority in about the year 1967 that she is an S.S.L.C. that she earns about Rs. 3/- per day and is able to maintain herself, and that she is a healthy person. These allegations remain uncontroversial and it is essentially on the basis of these that the Court below dismissed the petition though erroneously stating that the order of maintenance is cancelled under Section 489(2). Cr.P.C.

5. It is observed in : 1970 CriLJ522 Nanak Chand v. Chandra Kishore Aggarwal that the word 'child' in Section 488 does not mean a minor son no daughter. We find similar observations in a decision of this High Court in 1963 (2) Mys LJ 233 Ismail Sheriff v. Nasarin. The Supreme Court ruling however has further said that the real limitation is contained in the expression unable to maintain itself contained in Col. (1) of Section 488 Cr.P.C.. I am in respectful agreement with the view expressed in AIR 1950 Nag 231 State v. Iswar Lal that if it is shown that the 'child' is a major there Would be a presumption against her that she is able to maintain herself.

6. The petition is for enforcement of order for maintenance. The material provision applicable is therefore Clause (3) of Section 488 Cr.P.C. and in fact, the petition has been filed under that provision. In order to enforce the order, there must be a failure, without sufficient cause, to comply with the other. It is open to the respondent's father by way of defence to show sufficient cause why the order should not be executed vide 1950 (5) D.L.R. Madh B 89 Narinarayan v. Mst. Rani

Devi and A.I.R. 1943 Mad 416 : 44 Cri LJ 540 Sadhu Suryanarayana v. Sadu Laxmi Sundaramma.

7. The respondent has shown by the averments contained in his written statement which remain uncontroverted, that during the period for which maintenance is claimed in the petition, the petitioner who was a healthy educated major was able to maintain herself and that hence she is not liable to meet her demand.

8. The order of dismissal of the petition does not call for interference in revision and this Revision petition cannot be sustained. It stands dismissed.

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