

Somasekhar Vs. State of Karnataka

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Court : Karnataka

Decided On : Feb-18-1986

Reported in : ILR1986KAR1202

Judge : Desai, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125, 125, 125(1), 125(3), 126(3) and 128

Appeal No. : Crl. R.P. No. 369 of 1985

Appellant : Somasekhar

Respondent : State of Karnataka

Advocate for Def. : S.S. Koti, HCGP for R-1

Advocate for Pet/Ap. : K.S. Savanur, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Desai, J.

1. The Short point that arises for determination in this proceeding is whether costs could be awarded by the Court in an Execution Proceeding for enforcement of the

order passed under Section 125 of the Code of Criminal Procedure 1973 (for short the Code).

2. The brief facts necessary for the decision of the said point may be briefly stated as follows :-

3. The Petitioner is the husband of the second respondent. Respondent-2 filed an application in Crl. Mis. No. 44/81 in the Court of the Chief Judicial Magistrate, Dharwar against the petitioner for maintenance under Section 125 of the Code and she was awarded maintenance at the rate of Rs. 100/- per month as agreed to by the parties. The husband failed to pay the amount as per the said order. So the wife filed an application in Crl. Misc. No. 198/84 under Section 125(3) of the Code for enforcement of the said order of maintenance. According to her, the husband was due to pay a sum of Rs. 1200/- towards maintenance. She also claimed costs of the Execution proceedings. The Learned Magistrate issued distress warrant for the amount of maintenance and costs of Rs. 28/- holding that he had power to award costs also in an application under Section 125(3) of the Code. The husband paid Rs. 1,200/- towards maintenance. He filed Criminal Revision Petition No. 61/85 in the Court of the Sessions Judge, Dharwar against the order awarding costs of Rs. 28/-. The said Revision Petition was dismissed by the Learned First Additional Sessions Judge, Dharwar, The husband had approached the Sessions Judge in revision against the order passed by the Chief Judicial Magistrate, Dharwar and so this Revision Petition by him is not maintainable under Section 397(3) of the Code.

4. According to Section 126(3) of the Code the Court in dealing with applications under Section 125 shall have power to make such order as to costs as may be just. It is pertinent to note that only Section 125 is stated in Sub-section (3) of Section 126 and not application under Section 125(1) or 125(3) of the Code. This shows that the Legislature intended to include all applications under Section 125 of the Code within the purview of Section 126(3) of the Code. Section 128 of the Code only empowers the Magistrate within whose jurisdiction the husband resides to enforce the order of maintenance passed by another Magistrate. So, the execution has to be only under Section 125(3) of the Code. Therefore, the Court

can grant the costs in executing the order under Section 125(3) of the Code also in view of Section 126(3) of the Code.

In the result, the revision petition is dismissed.

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