

**ibrahimsab Vs. Faridabi**

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**Court :** Karnataka

**Decided On :** Apr-17-1986

**Reported in :** ILR1986KAR2251; 1986(2)KarLJ65

**Judge :** Patil, J.

**Acts :** Code of Criminal Procedure (CrPC) , 1974 - Sections 362, 399, 401 and 401(1)

**Appeal No. :** Crl. Petition No. 522 of 1984

**Appellant :** ibrahimsab

**Respondent :** Faridabi

**Advocate for Def. :** K.M. Hadimani, Adv.

**Advocate for Pet/Ap. :** Shivaraj Patil, Adv.

**Judgement :**

ORDER

**Patil, J.**

1. In this Criminal Petition filed under Section 482 Cr. P.C., the petitioner has sought to challenge the legality and correctness of the order dated 12-1-1984 passed by the Sessions Judge, Dharwad, in Criminal Revision Petition No. 78/83,

whereby he has dismissed the application made by the petitioner for re-admitting the Revision Petition filed by him and dispose of the same on merits.

2. The petitioner is the husband of the respondent. The respondent made an application under Section 125 of the Code of Criminal Procedure before the Magistrate, Hangal, in Mis. No. 19/83 and succeeded in obtaining an order of maintenance at the rate of Rs. 80/- per month. The petitioner, it would appear, was not present and had not participated in the proceedings before the Magistrate. He approached the Sessions Judge in revision questioning the legality and correctness of that order of maintenance made by the Magistrate in his absence. For one or the other reason, the Counsel for the petitioner before the Sessions Judge being not present, the learned Sessions Judge proceeded to dismiss the revision for default. The petitioner, therefore, made application before the Sessions Judge to re-admit the revision and give him a hearing. The Sessions Judge being of the view that he has no such inherent power of recalling his own order, having dismissed the application, the petitioner has approached the High Court.

3. Mr, Hadimani, learned Counsel for the respondent, also submitted that as provided under Section 362 Cr.P.C., the Criminal Court has no power of reviewing its own order and therefore the Sessions Judge has not committed any error in dismissing the application.

4. It appears, this contention cannot be sustained. While under Section 397 Cr.P.C. the Sessions Judge has ample power to call for and examine the records of any proceedings before any inferior Criminal Court within his local jurisdiction for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order' recorded or passed, and as to the regularity of any proceedings of such inferior Criminal Court, under Section 339, in case of any proceedings, the records of which have been called for by himself, the Sessions Judge has power to correct the orders of the inferior Court; and in doing so, he can exercise the same power as exercised by the High Court under Sub-section (1) of Section 401 Cr.P.C. Once the records of the inferior Criminal Court are called for examining the correctness, legality or propriety of the order, recorded or passed,

and the revision is posted for hearing, whether the revision petitioner is present or not, the only order that can be made; or passed is of rejecting or allowing the revision on merits. The order of dismissal of the revision for default is neither contemplated under the Code nor can one be made. Such an order of dismissal for default is no order. The Code of Criminal Procedure does not contemplate of making an order of dismissal of revision for default.

5. Section 362 Cr.P.C. contemplates judgment and final order disposing of the case. The expressions 'final order disposing of the case' mean a considered order on merits and not an order of dismissal for default and the provisions, therefore, do not come in the way of the Court (Sessions Judge) recalling such order and restoring the revision dismissed for default. The Sessions Judge was, therefore, not justified in dismissing the application made for re-admitting the revision dismissed for default. The petitioner has given satisfactory explanation for not being present on the particular date when the revision came up for hearing.

The application made before the Sessions Judge is allowed and the Criminal Revision Petition No. 78/83 before the Sessions Judge, Dharwad, is restored and it is ordered that the revision shall be disposed of in accordance with law.

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