

Balak Ram Vs. State

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SooperKanoon Citation : sooperkanoon.com/472091

Court : Allahabad

Decided On : Oct-24-1972

Reported in : 1973CriLJ750

Judge : P.N. Bakshi, J.

Appellant : Balak Ram

Respondent : State

Judgement :

ORDER

P.N. Bakshi, J.

1. This is a reference by the Additional District and Sessions Judge, Bareilly dated 12.2.1971 enhancing the rate of maintenance allowance awarded to Srimati Angoori Devi wife of Balak Ram under Section 489 Cr.P.C. from Rs. 19/- per month to Rs. 75/- per month.

2. It appears that Srimati Angoori Devi had moved an application under Section 488 Cr.P.C. against her husband Balak Ram in which a compromise was arrived at between the parties. In this compromise it was agreed that Srimati Angoori Devi would be paid a monthly allowance of Rs. 19/- and that the said amount will not be increased or decreased in future. On the basis of this compromise the Magistrate passed an order on 24.5.1957 in case No. 10 of 1957 directing. Balak Ram to pay

Rs. 19/- per month as maintenance allowance to Srimati Angoori Devi. Sometime after the passing of the order Srimati Angoori Devi filed an application under Section 489 Cr.P.C. for enhancement of the maintenance allowance which was rejected by the Magistrate on 28.2.1968. Subsequently she again filed an application under Section 489 Cr.P.C. on 11.6.1968 against Balak Ram in the court of City Magistrate Bareilly. This was case No. 119 of 1968. In this she again prayed for enhancement of the maintenance allowance to at least Rs. 100/- P.M. This application was rejected on 17.4.1969. Thereafter the present application which is the third in the series has been filed by Srimati Angoori Devi for enhancement of the maintenance allowance on the allegations that her husband's pay has doubled, that he was getting almost Rs. 500/- per month and that the costs of living had gone six times and the frugal amount awarded to her was most inadequate. This application was contested by Balak Ram on the ground that the earlier applications under Section 489 Cr.P.C. filed by Srimati Angoori Devi had been rejected and the orders of rejection had become final and that the present application was not maintainable in law. It is to be noted here that in his objection Balak Ram did not specifically deny the allegations made by his wife Srimati Angoori Devi to the effect that his income had doubled to Rs. 500/- per month since 1957 when the original order granting Rs. 19/- per month maintenance was passed in favour of Srimati Angoori Devi. The City Magistrate Bareilly has allowed this application by his order dated 12.2.1971 and has enhanced the maintenance allowance payable to Srimati Angoori Devi to Rs. 75/- from the date of application i.e. 8th September 1970. Aggrieved thereby Balak Ram filed a revision before the Additional District and Sessions Judge Bareilly, who has made the present recommendation to this Court for quashing the impugned order of the City Magistrate dated 12.2.1971.

3. I have heard counsel for the parties and have also perused the record of the case. Counsel for Balak Ram supporting the reference has contended that the compromise entered into between Srimati Angoori Devi and her husband in the original proceedings under Section 488 Cr.P.C. was binding upon the parties and it was not open to challenge under Section 489 (1) Cr.P.C. I have given my thoughtful consideration to this aspect of the matter but I do not agree with the submission made by the learned Counsel. Section 489(1) Cr.P.C. runs thus:

Alteration in allowance: (1) On proof of a change in the circumstances of any person receiving under Section 488 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance he thinks fit:

Provided that if he increases the allowance the monthly rate of five hundred rupees in the whole be not exceeded.

The compromise filed in case No. 10 of 1957 merged into the order of the court passed on 24.5.1957. It is now the court's order which is sought to be modified by the present application under Section 489(1) Cr.P.C. There is nothing in Section 489(1) Cr.P.C. quoted above, which, takes away the jurisdiction of the court to modify its own order, even though it may have been passed on the basis of a compromise. If there has been a change in circumstances of any person receiving or paying a monthly allowance under Section 488 Cr.P.C. it is always open to the court to alter the allowance under Section 489(1) Cr.P.C. I am supported in my view by a decision of the Kerala High Court reported in ILR (1966) 1 Ker 165. *Sivarajan v. Meenakshy*. In that case also an order for maintenance had been passed on the offer made by the husband and accepted by the wife during the time of hearing. Three and half years later the Magistrate enhanced the rate of maintenance allowance on the petition of the wife. That order enhancing the allowance was challenged by the husband on the ground that the original order being the result of a compromise the Magistrate had no jurisdiction to enhance the amount and the proper forum for granting such relief was the civil court. This argument was repelled and it was held therein that an order based on a compromise would still be an order under Section 488 Cr.P.C. and the court is competent to make such alteration therein as the circumstances might warrant under Section 488(1) Cr.P.C. In my view, therefore, it was open to the City Magistrate to have reconsidered the question of enhancing the maintenance allowance under Section 489 (1) Cr.P.C. even though, as mentioned above the order granting allowance had been based on a compromise entered into between the parties.

4. Counsel for Balak Ram has strenuously argued that in view of the earlier decisions of the court, mentioned above, refusing to enhance the maintenance allowance, the same could not now be varied under Section 489 Cr.P.C. He contends that those decisions operate as *res judicata* between the parties. It cannot be denied that even though there is no specific provision in the Criminal Procedure Code similar to Section 11 C.P.C. yet the principles of *res judicata* can be applied to criminal proceedings. But in the circumstances of the present case I am not inclined to apply line principles of *res judicata* for the following two reasons:

(i) the sole question which was considered in the earlier case was whether an order passed under Section 488 Cr.P.C. on the basis of a compromise could be varied under Section 489(1), Cr.P.C. On both the earlier occasions the Magistrate concerned had taken the view that the order granting maintenance, allowance having been passed on the basis of a compromise could not be subsequently varied under Section 489 (1) Criminal Procedure Code. There was no decision on the merits of the case. I have already held above that this view of law is not correct and that an order under Section 488 Cr.P.C. even though it may be based on a compromise entered into between the parties is open to variation under Section 489(1) Cr.P.C. In that view of the matter it would not be just and equitable if I deprive Srimati Angoori Devi of her statutory right to get the maintenance allowance altered merely on the ground of an existing erroneous decision of law *inter partes*.

(ii) In exercise of the revisional jurisdiction it is the bounden duty of this Court to consider whether an impugned order is just and equitable. Even assuming that the impugned order suffers from some legal infirmity interference therewith in the exercise of revisional jurisdiction is not always justified, if the impugned order is eminently fair, just and equitable. In the present case there can be no two opinions on the question that a paltry amount of Rs. 19/- which was awarded as maintenance allowance to Srimati Angoori Devi in the year 1957 is extremely inadequate to sustain the lady at the present time. If the income of the husband has increased considerably, it is but Just and proper that the maintenance of the wife should also be reasonably increased so that she can sustain herself.

5. For the reasons given above I am of opinion that this reference must be rejected in the form in which the recommendation had been made. But having perused the entire record of the case I find myself unable to accept the impugned order of the City Magistrate Bareilly enhancing the maintenance allowance of Rs. 75/- per month. It has been rightly observed by the District and Sessions Judge Bareilly that the rate of maintenance allowance has been arbitrarily fixed by the city Magistrate. In the present case there was no material before the City Magistrate on the basis of which he could have enhanced the maintenance allowance. Mere allegations in the application of Smt. Angoori Devi filed under Section 489(1) Cr.P.C. are not enough to establish the means of her husband. It was the duty of the Magistrate to have asked the parties to adduce evidence on this score. It was only after such evidence was produced before the court and considered by it that an order could be passed varying the maintenance allowance. In my view, therefore, it is necessary in the interest of justice to set aside the impugned order of the City Magistrate Bareilly and to direct him to afford the parties an opportunity to produce evidence in support of and in rebuttal of the allegations which are said to form the basis for the enhancement of the maintenance allowance.

6. I. therefore, modify the referring order in terms mentioned above and direct that the City Magistrate Bareilly will decide the application of Srimati Angoori Devi filed under Section 489(1) Cr.P.C. for enhancement of the maintenance allowance after giving the parties an opportunity to lead evidence in the light of the observations made by me. The case is remanded to the City Magistrate Bareilly for the above purpose. The file of the case shall be sent back immediately to the court below for speedy disposal according to law.