

Rameshwar Vs. Ramibai

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Court : Madhya Pradesh

Decided On : Mar-28-1986

Reported in : 1987CriLJ1952

Judge : K.L. Shrivastava, J.

Appellant : Rameshwar

Respondent : Ramibai

Judgement :

ORDER

K.L. Shrivastava, J.

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') is directed against the order dated 25-10-1983 passed by the Additional, Sessions Judge, Ratlam Camp Jaora in Criminal Revision No. 8 of 1981 maintaining the order Dt. 28-9-1981 passed by the Judicial Magistrate First Class Jaora under Section 125 of the Code for making a monthly allowance for the non-applicant's maintenance in the sum of Rs. 150/-.

2. The non-applicant is the wife of the applicant. By his order Dt. 28-9-81 the learned Magistrate has ordered the applicant to make a monthly allowance of Rs. 150/- for the maintenance of the non-applicant. It has been made payable from 25-11-78 which is the date of application under Section 125 of the Code.

3. The applicant has urged that on the material on record the learned lower courts have erred in arriving at the conclusions they did. It was also urged that no reasons have been assigned for granting maintenance from the date of the application.

4. The only right a party has in revision is to bring its case before the Court and it has no right to demand adjudication on questions of fact or law or both. It is well settled that quantum of allowance made for, cannot be challenged in an application for revision which is not to be regarded as some sort of appeal.

5. The main question to which the Court exercising revisional jurisdiction has to address itself is whether substantial justice has been done. It is only in exceptional cases when there is glaring defect in the procedure or there is manifest error on point of law and consequently there has been flagrant miscarriage of justice, that the revisional Court steps in to interfere. In this connection the decision in *Thakur Das v. State of M.P.* : 1978 CriLJ1 is pertinent.

6. In the instant case, it is no doubt true that the non-applicant did not specifically plead in her application that the applicant has contracted a second marriage or that he has sufficient means to provide maintenance as claimed by her. However, on the facts of the case this omission can have no fatal consequences.

7. As pointed out in the decision in *Ashfaque Mohd's case* 1983 Jab LJ 55 proceedings contained in Chapter IX of the Code (Ss. 125 to 128) under the caption 'order for Maintenance of Wives, Children and Parents' may be described as quasi Criminal or quasi Civil. Therefore, an application is not to be strictly construed as a pleading in a civil litigation. The allegation of existence of sufficient means with the applicant is implicit in the prayer for order for grant of allowance by him. In the decision in *Mohd. Inayatulla Khan's case* 1985 MPWN 365 it has been held that for Section 125(1) of the Code proof of the essential requirement by evidence would suffice. In the decision in *Vijay Shankar's case* 1984 MPWN 62 it has been pointed out that it is actually for the husband and not for the wife to furnish reliable proof of his income as the latter is not expected to know his exact income.

8. Further the object of pleading is to avoid surprise to the opponent. In the instant case parties were alive to the aforesaid aspects of the matter and have led evidence. There is no question of surprise or prejudice.

9. On a cumulative consideration of the evidence on record it does appear that the applicant has contracted a second marriage. Further it may be pointed out that the explanation below the second proviso to Section 125(3) of the Code provides that if a husband keeps a mistress, it shall be construed as a just ground for his wife's refusal to live with him. The learned Addl. Sessions Judge, in revision ought not to have disturbed the finding of the learned Magistrate on the point of second marriage and the impugned order is sustainable on this ground too.

10. As to her inability to maintain herself, in para 3 of the application under Section 125 of the Code the non-applicant has stated that she earns nothing and engages herself in work at hand. From her deposition too it is gathered that she has no source of earning and that her father has four bighas of land and she engages herself in agricultural operations. Mangilal (A.W. 4) has no doubt stated that the non-applicant at the maximum earns Rs. 100/- to Rs. 125/- per month by way of wages. This is only his estimate and it is not that she works on wages throughout the year. In any event in the circumstances of the case making a monthly allowance of Rs. 150/- for the maintenance of the non-applicant is not liable to be interfered with in exercise of powers under Section 482 of the Code.

11. On perusal of the record, I find that the impugned order cannot be characterised as incorrect, illegal or improper. It rightly affirms the order passed by the trial Magistrate which is sustainable on the material on record.

12. The saving of inherent powers under Section 482 of the Code is designed to achieve a salutary public purpose. Label of the petition is immaterial and the power is to be used for the purposes specified in the provision. Though justice has got to be administered according to law, the ends of justice are higher than the ends of mere law. As pointed out in the decision in Raj Kapoor's case AIR 1980 SC 258 : 1980 Cri LJ 202 the amplitude of the inherent powers under Section 482 of the Code remain unaffected by Section 397 *ibid*. However, the remedy thereunder is not to be resorted to like the remedy of appeal or revision. Under

Section 482 of the Code. The High Court alone may pass orders *ex debito justitiae* in cases where grave and substantial injustice has been done. As pointed out in the decision in *Municipal Corpn. of Delhi's case AIR 1983 SC 67 : 1983 Cri LJ 159* the extraordinary power under Section 482 of the Code has to be exercised sparingly.

13. The learned Magistrate has made the allowance of maintenance payable from the date of the application and this has been maintained by the impugned order. In the decision in *Mohd. Inayatulla Khan's case (supra)* it has been held that the general rule is to order payment of maintenance from the date of the order and deviation from the rule and making allowance payable from the date of the application without recording reasons for so doing introduces arbitrariness in the order. In view of the decision and on the facts of the case that the arrears pertain to a long period of time, I am of opinion that the impugned order needs to be modified to the extent that the payment of maintenance allowance shall be from 25-9-1981 which is the date of the Magistrate's order.

14. In the result, this petition under Section 482 of the Code is partly allowed. The impugned order is modified only to the extent that the maintenance allowance shall be payable from 25-9-1981. The petition is dismissed in other respects.