

Abdul Hamid Vs. Sahibdin

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Court : Punjab and Haryana

Decided On : Aug-27-1997

Reported in : II(1998)DMC10

Judge : R.L. Anand, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 12, 125, 125(2), 127, 397(3), 399 and 482

Appeal No. : Crl. Misc. No. 5835-M of 1997

Appellant : Abdul Hamid

Respondent : Sahibdin

Advocate for Def. : S.S. Salar, Adv.

Advocate for Pet/Ap. : Arihant Jain, Adv.

Disposition : Petition dismissed

Judgement :

R.L. Anand, J.

1. Two legal propositions are going to be answered in this petition:

(i) From what point of time the order under Section 17, CPC can be made enforceable

and

(ii) Whether the petition under the garb of second revision is legally maintainable in the High Court or not ?

Sahibdin alias Sajad minor son of Abdul Hamid and Mst. Sahib Bano minor daughter of Abdul Hamid filed a petition under Section 127, Cr.P.C, in the Court of Sub-Divisional Judicial Magistrate, Malerkotla, for the enhancement of the maintenance. Smt. Amanat mother of the present respondents (Sahibdyi and Mst. Sahib Bano, minors) was married with Abdul Hamid, petitioner of this case, and out of this wedlock Sahibdin and Sahib Bano were born. However, the relations between Smt. Amanat and Abdul Hamid became strained and they were divorced. Sahibdin and Sahib Bano filed a petition under Section 125, Cr.P.C, for the grant of maintenance, which was allowed on 7th March, 1983 and the Court allowed the maintenance at the rate of Rs. 100/- per month to each applicant. Both the respondents, i.e., Sahibdin and Smt. Sahib Bano, are receiving maintenance at the said rate. Thereafter they applied for the enhancement of the maintenance and it was alleged that Sahibdin was aged about 12 years and was studying in the 7th Class and Sahib Bano was aged about 8 years and was studying in the 3rd Class in the Islamia Middle School, Binjoki Khurd. They further alleged that the prices of the necessities had gone up and they could not make both ends meet with the small amount of Rs. 200/- per month. They requested the Court for the enhancement of the maintenance because their father Abdul Hamid (present petitioner) was earning more than Rs. 5,000/- per month. With the said allegations, it was prayed by them that the maintenance should be enhanced to Rs. 800/- per month (Rs. 400/- each). This application was contested by the father and vide order dated 16th December, 1994, the learned Magistrate calculated the income of the father at Rs. 2,000/- per month and directed him to pay Rs. 500/- per month as maintenance to both Sahibdin and Sahib Bano. It was also directed by the Magistrate that the order shall take effect from the date of the application, i.e. 1.9.1988. It was further ordered by the Magistrate that since Sahibdin had attained

the age of majority, hence the maintenance shall be payable to him upto the date of majority. The operative portion of the order passed by the learned Magistrate is contained in para No. 4 of the judgment which is reproduced as under :

'I have heard the learned Counsel for the parties and gone through the evidence on the file. A perusal of the evidence on record revealed that AW 1 Abdul Rashid is the maternal grand-father of the applicants and he stated that both the applicants are the children of the respondent and the maintenance being paid by the respondent at the rate of Rs. 100/- per month is not sufficient to maintain them. He also further deposed that the respondent is a commission agent in the vegetable market, Malerkotla and is a partner of the firm known as M/s. Zimidara and Company, Malerkotla, and he has also got a share in the plot owned by the said firm in vegetable market, which is valuing more than Rs. two lacs. He stated that income of the respondent is near about Rs. 5,000/- to Rs. 7,000/- per month. Besides that, his father has also given him agricultural land measuring 2 killas which he cultivates through his servants and keeps the produce himself. He stated that applicants have got no source of income and also there is no other property with both of them to maintain themselves. The minimum allowance, required by the applicants is Rs. 800/- to Rs. 900/- per month. AW 2 Smt. Amanat has stated that both the children are taking education in Islamia School, Binjoki Khurd. She stated that applicant No. 1 is aged about 14 years and is a student of 8th Class while applicant No. 2 is aged about 11 years and is a student of 6th Class. She alleged that she has got no source of income and hence is unable to maintain them. While on the other hand, she stated that respondent is commission agent in the vegetable market and is earning near about Rs. 8,000/- per month and besides that he has also got agricultural land with him. She stated that a sum of Rs. 1,000/- per month is required for the proper maintenance of the applicants. I have carefully considered this evidence on the file and it is well- established that the applicants are the children of the respondent and that they have got no source of income. They are the students of the Islamia Middle School, Binjoki Khurd, but they are unable to maintain themselves for want of sufficient income in their hands. They are residing with their mother and have got no property, out of which they can earn anything. Their mother has also got no source of income to provide sufficient maintenance to them. It would be evident that the respondent is a commission

agent in the vegetable market and he himself earns a lot. In the judgment Ex. A1, which was passed by J.M.I.C, Malerkotla on 7.3.1983, it was held that respondent was earning Rs. 2,000/- per month. However, the respondent has tried to prove that his income is not more than Rs. 500/- per month. He has produced the accounts returns from the market committee which are Exs. R2 to R4 and the Counsel for the respondent contended that according to these account returns, the income of the respondent is not more than Rs. 500/- per month. However, Abdul Rashid respondent appeared as RW 2 and he stated in his examination- in-chief, that he is earning Rs. 800/- to Rs. 900/- per month. The statement of Abdul Rashid himself does not tally with the accounts produced by him and that shows that the accounts produced by him are not correct. He has concealed his income. It is relevant to add that respondent had contracted a second marriage and has also got one child from that marriage. With the little income of Rs. 500/-, he cannot maintain his own family even and if he had not got sufficient income with him, he could not afford to contract second marriage. The contract of second marriage itself shows that he is living a good life and he has got sufficient income to maintain them. It is also further relevant to say that even the labourer in these days gets Rs. 40/- to Rs. 50/- per day as labour charges, but the respondent is a commission agent and must be earning more than that and in my opinion his income of Rs. 2,000/- per month was rightly calculated by the Court of J.M.I.C., Malerkotla, as back as in 1983. Even if it is accepted that at present also he is earning Rs. 2,000/- per month, he must pay reasonable maintenance to the applicants. As such keeping in view the above circumstances as evidenced on record, a sum of Rs. 250/- per month is fixed as maintenance for each petitioner separately. In total the respondent is directed to pay Rs. 500/- per month to the applicants. The order shall take effect from the date of application. However, applicant No. 1 has attained or is about to attain the age of majority. As such the maintenance shall be payable to him upto the date of majority. The application is disposed of accordingly.'

The father went up in revision challenging the aforesaid order, which was disposed of by the Court of Additional Sessions Judge, Sangrur, vide judgment dated 5th February, 1997. The Additional Sessions Judge dismissed the revision by giving his reasons as contained in para Nos. 7 to 10 of the judgment, which are quoted

as under :

'7. The other ground of learned Counsel for the revisionist was that enhancement of maintenance allowance cannot be given from the date of application. It has to be from the date of order when the enhancement is allowed and in this behalf the learned Counsel relied upon a decision contained in Sri Joydeb Chakraborty v. Smt. Bharati Chakraborty & Anr., 1994 (1) HLR 673; Madan v. State of Rajasthan & Anr., 1993 (1) HLR 632=1 (1993) DMC 71; Rulia Singh v. Smt. Kartaro, 1990 (1) PLR 43=I (1990) DMC 521.

8. On the other hand, the learned Counsel for respondents referred to the provision contained in Section 127, Cr. P.C. and he has relied upon the latest decision in this behalf contained in Bhagat Singh v. Smt. Parkash Kaur & Ors., 1973 CrLJ 719; Parmeshwara Moothar v. Balameenakshi, AIR 1969 Kerala 108. He has also referred to a recent decision of our own Hon'ble High Court reported as Smt. Omidevi v. Hanmant Singh & Ors., 1994 (1) Recent Criminal Reports 458, wherein it has been held by the Hon'ble High Court that enhancement of maintenance can be allowed from the date of application and no special reasons need be recorded for the same.

9. I have carefully considered these arguments in the light of case law referred to by the learned Counsel for the parties.

10. In view of latest decision of our Hon'ble High Court, the enhancement of maintenance can be allowed from the date of application and that has been rightly done by the learned Trial Court. Thus, the revision petition is without merit and the same is dismissed. The learned Trial Court record be sent back being no longer required. Criminal revision petition record be consigned to the record room.'

Still aggrieved by the orders, Abdul Hamid has filed the present petition under Section 482, Cr.P.C. for the quashment of both the orders, which petition has been resisted by the respondents not only on merits but also on the ground regarding its legal maintainability and it was also pleaded by the respondents that the learned Magistrate and the revisional Court were fully justified in granting the enhanced amount of maintenance from the date of the application and it was not necessary

on their part to award the maintenance from the date of the order.

2. I have heard Mr. Arihant Jain, Advocate, appearing on behalf of the petitioner, and Mr. S.S. Salar, Advocate, appearing on behalf of the respondents, and with their assistance have gone through the record of this case.

3. As I have stated at the very outset, two legal points have emerged out in the present petition. It was submitted by the learned Counsel for the petitioner that both the Courts committed a patent illegality when they had ordered for the enhanced amount of maintenance from the date of the application under Section 125, Cr.P.C. According to the learned Counsel for the petitioner, the enhanced amount of maintenance could only be awarded by the learned Magistrate from the date of the passing of the order, i.e., 16.12.1994, and not with effect from 1.9.1988, i.e., the date of application. In support of his contention, learned Counsel for the petitioner has relied upon *Rulia Singh v. Smt. Kartaro*, 1990 (1) PLR 43=I (1990) DMC 521; *Sri Joydeb Chakraborty v. Smt. Bharati Chakraborty & Anr.*, 1994 (1) All India Hindu Law Reporter 673 - a judgment of the Calcutta High Court, and *Mudan v. The State of Rajasthan & Anr.*, 1993 (1) All India Hindu Law Reporter 632=I (1993) DMC 71 a judgment of the Rajasthan High Court, and it was submitted with force that the order of the learned Magistrate could only be prospective and not retrospective from the date when the application under Section 127 of the Code of Criminal Procedure was filed.

4. On the contrary it was argued by the learned Counsel appearing on behalf of the respondents that the order of the learned Magistrate, which had been confirmed by the revisional Court, was perfectly in accordance with the provisions of Section 127, Cr. P.C., and there was no bar on the part of the Magistrate to award the enhanced amount of maintenance from the date of the filing of the application.

5. After considering the rival contentions of the parties, I am of the considered view that the first contention which has been raised by the learned Counsel for the petitioner is totally devoid of any merit. Section 127, Cr.P.C, lays down as follows:

'127. Alteration in allowance-(1) On proof of a change in the circumstances of any person, receiving under Section 125 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration in the allowance as he thinks fit:

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

(2) Where it appears to the Magistrate that in consequence of any decision of a competent Civil Court, any order made under Section 125 should be cancelled or varied, he shall cancel the order or as the case may be, vary the same accordingly.

(3) Where any order has been made under Section 125 in favour of a woman who has been divorced by, or has obtained a divorce from her husband, the Magistrate shall, if he is satisfied that-

(a) the woman has, after the date of such divorce, remarried, cancel, such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order-

(i) in the case where such sum was paid before such order, from the date on which such order was made;

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a monthly allowance has been ordered to be paid under Section 125, the Civil Court shall take into account the sum which has been paid to, or recovered by, such person as monthly allowance in pursuance of the said order.'

A reading of the section would show that the effect of this section stands emerged from Section 125, Cr.P.C. itself. To my opinion, Section 127 is more or less in continuation of the provisions of Section 125. The very start of the wording of Section 127 states that 'on proof of a change in the circumstances of any person receiving under Section 125 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration in the allowance as he thinks fit. It is not disputed before me that the order under Section 125, Cr.P.C, can be made either from the date of the application or from the date of the passing of the order. In this regard a discretion has been vested to the Magistrate itself. Though at one point of time there was a controversy with regard to the enforcement of the order, which might be passed under Section 125, Cr. P.C., as to whether such order should be made enforceable from the date of the filing of the petition or from the date of the order, yet this controversy has already been solved by the various pronouncements. However, I can take the assistance of two judgments of this Court reported as *Karnail Kaur v. Raja Singh*, 1997 (1) All India Criminal Law Reporter 385; and *Amarjit Kaur v. Sartaz Singh*, 1997 (2) All India Criminal Law Reporter 157. In these authorities it has been laid down that maintenance allowance can be awarded in the proceedings under Section 125, Cr.P.C. from the date of the application and the provision of Section 125(2) does not say that the Magistrate has to give special reasons for granting maintenance from the date of the application. Special reasons are not supposed to be given in order to award maintenance from the date of the application as there is no mandate to this effect. It has been observed in *Amarjit Kaur's* case (*supra*) as follows :

'This sub-section does not say that the Magistrate has to give special reasons for granting maintenance from the date of the application. What is meant by the sub-section can be only this; that is, if the order is silent as to the date from which the

maintenance is payable then maintenance shall be payable from the date of the order, and if the maintenance is to be paid from the date of the application itself then there should be a specific order in that behalf by the Court. There is nothing in this Section to hold that the Magistrate should give special reasons if he is to order that maintenance shall be payable from the date of the application. Therefore, the language of Sub-section (2) of Section 125 does not authorise the Court to hold the view that the Magistrate is bound to give special reasons for granting maintenance from the date of the application.

The very same question arose for consideration before a Single Judge of this Court as to whether it is obligatory for the Court to give special reasons for granting maintenance /interim maintenance under Section 125, Cr. P.C. from the date of the application. This specific question was referred by the Single Judge for the opinion of a larger Bench. Accordingly, a Division Bench was constituted and the Division Bench answered the reference in the negative, and held that it is not obligatory for the Court to give special reasons for granting maintenance/interim maintenance under Section 125, Cr.P.C. from the date of the application which is purely within its discretion.'

6. As I have stated above, the power under Section 127 flows from Section 125 itself. Where there is no bar to the award of maintenance from the date of the application under Section 125, Cr.P.C, there could not be any embargo upon the Court that the enhanced amount of maintenance can only be awarded from the date of the passing of the order. In this regard I am also fortified with the judgment of our own High Court reported as Bhagat Singh v. Smt. Parkash Kaur & Ors., 1973 CrL.L.J. 719, wherein the Hon'ble Judge interpreted the provisions of Section 488(2) in para No. 3 of the judgment as follows :

'The learned Additional Sessions Judge turned down a contention raised on behalf of the petitioner that Section 489 of the Code of Criminal Procedure did not permit an increase in the monthly allowance to take effect from the date when it is asked for and that it can be awarded only prospectively. The contention has been repeated before me and support for it is sought in J.H. Amroon v. Miss R. Sasson, AIR 1949 Cal. 584, Blank, J., who decided that case, held that Sub-section (2) of

Section 488 of the Code which runs thus :

'488. (2) Such allowance shall be payable from the date of the order or if so ordered, from the date of the application for maintenance.'

Could not operate in the case of an order under Section 489 wherein it was not repeated and that order of that type could not be made so as to take effect retrospectively. The weight of authority, however, is against the view expressed by Blank, J. In AIR 1958 Mys. 190:1958 Cr.LJ. 152, K.S. Hegde, J. (now a Judge of the Supreme Court) held that Section 489 has no independent existence and must be considered as a part of and read as a proviso to Section 488(1) so that Sub-section (2) of Section 488 would apply as much to an order passed under Sub-section (1) thereof as to an order passed under Section 489. This was also the view taken by T.C. Raghavan, J. in Parameswara Moothar v. Balameenakshi, AIR 1969 Kerala 108:1969 Cr.LJ. 484. With all respect I am of the opinion that this is the correct view and that the learned Magistrate had the jurisdiction to make the enhancement in the maintenance allowance effective from the date when it was asked for.'

7. The case law which has been relied upon by the learned Counsel for the petitioner is not applicable to the facts in hand. In Madan's case (supra) it was held in a petition for cancellation of maintenance, the order of the cancellation of the maintenance under Section 127(2) Cr.P.C, should be prospective. Rather this authority fortifies my view that the order under Section 127(2) Cr.P.C, can be made enforceable from the date of the filing of the application. Similarly, the authority of Rulia Singh's case (supra) can be fully distinguished on facts. In the said case there was no allegation on the part of the wife that the proceedings were delayed or that there were any laches on the part of the husband. On facts this Court formulated an opinion that the enhanced maintenance ought to have been granted from the date of the order passed by the Trial Court and not from the date of the filing of the application under Section 127, Cr.F.C. The authority of the Calcutta High Court reported as Sri Joydeb Chakraborty v. Smt. Bharati Chakraborty & Anr., (supra), cannot be followed as in the view of this Court the power of enhancement of maintenance has flowed from the provisions of Section

125, Cr.P.C. When there is no bar for the grant of maintenance either from the date of the application or from the date of the order under Section 125(2), Cr.P.C, there cannot be any bar for the Court for awarding the enhanced maintenance from the date of the application.

8. Resultantly, the first aspect of the case is decided against the petitioner and in favour of the respondents and it is held that the enhanced maintenance under Section 127, Cr.P.C. can also be awarded from the date of the filing of the petition and it is not necessary on the part of the Magistrate to make the order enforceable from the date of its passing.

9. The second proposition is whether a petition under Section 482, Cr.P.C, under the garb of second revision can be filed in the High Court or not. Section 397(3) of the Code of Criminal Procedure specifically lays down that if an application under this section is either made to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by either of them. When the second revision has been specifically barred, any attempt on the part of the litigant to invoke the revisional jurisdiction of the High Court under the garb of Section 482, Cr.P.C, is supposed to be discouraged and deprecated. In *Hiralal v. Smt. Beti Bai*, 1997 (1) All India Criminal Law Reporter 359, it was held by the Allahabad High Court after taking note of the case law that when a maintenance petition had been disposed of and the revision by the husband against the order of the Trial Court granting maintenance to the wife had been dismissed by the Sessions Judge, second revision under Section 482, Cr.P.C. was not maintainable. Support can also be taken from *Pritam v. Dalip Singh & Ors.*, 1997 (3) RCR 92, in which it was held that once a revision against the order of the Judicial Magistrate had been dismissed by the Sessions Judge, and the second revision before the High Court in the proceedings under Section 482, Cr.P.C, when filed, the High Court would be slow to exercise its inherent jurisdiction. It will only interfere if there is an abuse of the process of the Court or the interests of justice otherwise so require. If the present case is viewed in the light of the ratio laid down above, it cannot be said by any stretch of imagination that the order of the learned Magistrate, when he granted enhanced maintenance from the date of the filing of the application, was unjustified or oppressive. The paltry amount of Rs. 200/- was awarded to the two

children. The children have become school-going. In the modern times, when the prices of the essential commodities are touching sky high, it cannot be said that the order granting enhanced maintenance was perverse or was an abuse of the process of law. In the light of the above, the view as expressed by the Rajasthan High Court in *Narain v. State of Rajasthan*, 1997 (3) RCR 44, cannot be applied because in this very authority also the Rajasthan High Court has held that second revision in the garb of Section 482, Cr.P.C, should be entertained only in appropriate cases to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The case of *Narain v. State of Rajasthan* (supra) was a case where the Hon'ble Judge *prima facie* came to the view that a case of civil liability had been converted into a criminal one by the complainant and this aspect of the case was not considered properly by the Courts below. When the very action of the complainant was a sheer abuse of the process of law, the provisions of Section 399, Cr.P.C. do not put a blanket bar for invoking the inherent powers under Section 482, Cr.P.C. However, present is a case where we cannot say that the minors were abusing the process of law, when they filed a legitimate petition under Section 127, Cr.P.C. for the enhancement of the amount of maintenance. On equitable and legal grounds also the father is supposed to maintain his children in a satisfactory state of condition. Hence the enhanced amount of maintenance cannot be termed either excessive or oppressive *qua* the father. Thus both the proposition propounded at the very outset of this judgment are replied as follows :

(i) The order of enhanced amount of maintenance can be passed by the Magistrate from the date of the filing of the application under Section 127, Cr.P.C.

(ii) Though there is not a blanket bar in filing a second revision under Section 399, Cr.P.C. and that such an effort can be made by a litigant only on showing abuse of the process of law or to secure the ends of justice, otherwise, the second revision under the garb of Section 482, Cr. P.C., is not legally maintainable.

10. Net result is that the present petition is totally devoid of any merit and the same is hereby dismissed.

