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Court : Delhi

Decided On : Jun-19-1968

Reported in : 5(1969)DLT105

Judge : I.D. Dua, C.J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 488; Constitution of India - Article 227

Appeal No. : Criminal Revision Appeal No. 12 of 1968

Appellant : Ram

Respondent : Naraini

Advocate for Pet/Ap. : S. Malhtora and; Chabildas, Advs

Judgement :

I.D. Dua, C.J.

(1) The facts giving rise to this revision may briefly be stated. Smt. Naraini, wife of Siri Ram (petitioner in this Court), approached the Nyaya Panchayat at Chandpur, Parnaga and Tehsil Sadar District Bilaspur, for maintenance against her husband under section 488, Criminal Procedure Code. The Panchayat is stated to have made some order of which the parties before me have nto cared to produce a copy in this Court. But be that as it may, a Full Bench of the Nyaya Panchayat on

April 7, 1965, made an order directing Siri Ram to pay a sum of Rs. 80.00 per month to Smt. Naraini on the condition that she lives in the house of her in-laws and nto in that of her parents.

(2) Against the order of the Full Bench of the Nyaya Panchayat, Siri Ram preferred a revision in the Court of the Magistrate 1st Class (T. O.), Bilaspur, under section 93 of the Himachal Pradesh Panchayat Raj Act. That Court allowed the revision and dismissed the application presented by Smt. Naraini under section 488, Criminal Procedure Code. It appears that in the meantime the Judicial Commissioner's Court ruled in Dhiana v. Smt. Ayodhia, (Criminal Reference No. 20 of 1965) that orders made under section 488, Criminal Procedure Code, were nto revisable under section 93 of the Himachal Pradesh Panchayat Raj Act. The legal position having been so declared by the Court of the Judicial Commissioner, Smt. Naraini again approached the Magistrate's Court with a prayer that the previous order of the learned Magistrate dated November 30, 1965, was a nullity and should, thereforee, be ignored and the order made by the Full Bench of Nyaya Panchayat be revived. It may be pointed out that after the earlier order of the learned Magistrate dated November 30, 1965, proceedings under section 488, Criminal Procedure Code. were actually initiated in the Court of the Magistrate and it is in the course of these proceedings that this application was made. The learned Magistrate 1st Class on January 27, 1967, allowed Smt. Naraini's prayer and declared that the application under section 488, as initiated in the Court of that Magistrate, did nto lie and rejected the same. Siri Ram then approached the Court of the Sessions Judge, Simla, with an application for revising the order of the learned Magistrate dated January 27, 1967. This application was rejected by the learned Sessions Judge on November 9, 1967, in a fairly exhaustive and detailed order. According to the learned Sessions Judge, the order of the learned Magistrate dated January 27, 1967, reviewing the earlier order of November 30, 1965 was nto tainted with any jurisdictional infirmity and indeed that order rightly declared the earlier order to be without jurisdiction in view of the decision of the learned Judicial Commissioner in Dhiana's case.

(3) It is against this order of the learned Sessions Judge that the present revision has been presented in this Court.

(4) Shri Sushil Malhtora, the learned counsel for the petitioner (Siri Ram), has very trankly conceded that if the earlier order of the learned Magistrate dated November 30, 1965, is to be treated as one a wanting in inherent jurisdiction then the subsequent order of the Magistrate dated January, 27, 1967, as also that of the learned Sessions Judge on revision, cannto successfully be challenged. He has, however, submitted that the order dated November 30, 1965, cannto be considered to be tainted with want of inherent jurisdiction and, thereforee, however illegal it may be, it cannto be considered to be a nullity. In support of this argument he has cited a single Bench decision of the Kerala High Court in P. Kannan hunhimangalam v. The Food, Inspector Cannanore Municipality. In that case on an application under section 417 of the Code of Criminal Procedure, ntoice was issued to the opposite party which was heard and the Court found it to be a fit one to condone the delay. Later, the same question having been agitated on the ground that section 5 of the Limitation Act was nto applicable to such cases, the Court observed that this did nto go to prove the inherent lack of jurisdiction of the Court. Seeking support from this analogy, Shri Malhtora has submitted that in the same way the order of the learned Magistrate, though made o.n revision proceedings which was later held to be incompetent, could nto be considered to be a nullity because of want of inherent jurisdiction and that it was a mere irregularity or at the worst an illegality which would nto render the proceedings and the order a nullity or non-est.

(5) I regret my inability to accept this argument. Right of revision like right of appeal, is a statutory right. It is always created by statute and no such right can be implied. Therereforee, if there was no right of revision, then any order made by the Magistrate purporting to exercise a non-existent revisional jurisdiction must necessarily be held to be wholly unauthorised and without jurisdiction and if it is lacking in inherent jurisdiction, then it cannto but be void and a nullity. On this premise, the later order of the Magistrate made on January 27, 1967, would merely have the effect of ignoring the earlier order which was void for want of inherent jurisdiction. The order of the learned Sessions Judge, thereforee, must be held to be perfectly lawful and unexceptionable.

(6) Shri Sushil Malhtora has then attempted to challange the order of the Full Bench of the Nyaya Panchayat dated April 7, 1965, and he has prayed that this Court may, in the suo mtou exercise of its power under Article 227 of the Constitution go into the legality of this order. Article 227 confers on this Court an extraordinary constitutional jurisdiction for the purpose of supervising and superintending the proceedings in all the subordinate Courts and tribunals within its jurisdiction so as to see and ensure that they keen provisions. Any manifest injustice discovered in the proceedings before the subordinate tribunals and courts arising from breaches or violations of law deserves to be set right by this Court in the exercise of this supervisory constitutional power. It is true that this power has to be exercised with caution and only in cases of grave injustice resulting from serious errors of law, and also that if such injustice is shown to this Court. Then, in my opinion, this Court would be failing in its constitutional duty to decline to set right the wrong done to an aggrieved party. I have, thereforee, gone into the record of the proceedings before the Nyaya Panchayat with some care, but the learned counsel has nto been able to bring to my ntoice any grave or serious legal infirmity in the impugned order. All that he has been able to point out is that the Nyaya Panchayat has made a conditional order of payment of maintenance of Rs. 80.00 per month to Smt. Naraini on the condition that she lives in the house of her in-laws and that such a condition could nto be imposed under the law. Whether or nto such a condition could be imposed, need nto be gone into by me because this condition does nto harm or prejudice Siri Ram and, thereforee, such an objection does nto lie in his mouth. If at all, it is Smt. Naraini who may feel aggrieved with such a condition, but she is nto complaining against the conditional order. I am, thereforee, unable to find any cogent ground for interfering with the impugned order of the Nyaya Panchayat under Article 227 of the Constitution at the instance of Siri Ram petitioner.

(7) Shri Sushil Malhtora has also attempted to persuade me to hold that the amount of maintenance fixed is excessive. He has further added that there is no evidence on the basis of which the amount of maintenance fixed could be justified. This submission essentially seeks to challenge a question of fact with which this Court is normally disinclined to interfere under Article 227 of the Constitution. The counsel has desired me to go into the record and appraise the evidence for

myself, but I have nto been persuaded to acceed to this prayer. In regard to the argument about the absence of evidence on record of the present petitioner's means, it must be pointed out that the Panchayats have been set up because it is felt that the members of the Panchayat being local men, normally know the parties and are also aware of the relevant circumstances which gave rise to the controversy they are called upon to decide and have, to some extent, personal knowledge of all the various relevant facts and circumstances. In the case in hand, I have no reason to doubt that the members of the Panchayat must have kept in view the financial resorces of the husband Siri Ram. What has impressed me still more is the fact that admittedly the husband did nto urge before the Nyaya Panchayat that this amount was exessive, and indeed even before me, his counsel has nto been able to state with precision his actual financial resources. It may here be pointed out that maintenance fixed under section 488, Criminal Procedure Code, is fixed on summary proceedings for the purpose of providing speedy relief to neglected wives and deserted children, and nto only it can be varied if a change of circumstance is brought to the ntoice of the tribunal or Court fixing such maintenance but even a Civil Court can be approached for the purpose of coming to a final conclusion on the rights and liabilities of the parties. Orders urder section 488, Cr. P. C. granting maintenance to helpless wives and children are nto to be lightly interfered with on revision, when no grave illegality and no manifest injustice is made out. I have, thereforee, little hesitation in disallowing this application. I, however, hope that better counsel would prevail and the husband and wife would still think of living together once again. In this hope, I am nto making any order as to costs which I might have ordered by virtue of the power conferred by section 488(7) Cr. P. C. I have made this order on the assumption that the husband has been paying regularly the amount awarded. It, however, my assumption is unjustified, then I have no doubt the Court below would help the wife in securing the payment without undue delay.

(8) As observed earliear, this petition fails and is dismissed.

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