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Court : Kerala

Decided On : Dec-13-1966

Reported in : 1967CriLJ1640

Judge : Anna Chandy and; V.P. Gopalan Nambiyar, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 435 and 488

Appeal No. : Criminal Revn. Petn. No. 549 of 1965

Appellant : Devaki and anr.

Respondent : Kitta

Advocate for Def. : K.P. Ramunni Menon,; K. Ramakumar, Advs. and;State Prosecutor

Advocate for Pet/Ap. : V.R. Krishna Iyer and; V.M. Nayanar, Advs.

Disposition : Petition allowed

Judgement :

Gopalan Nambiyar, J.

1. This Revision Petition, arising from the proceedings under Section 488 Crl. P. C., has been referred to a Division Bench in view of the preliminary objection raised to its maintainability on the ground that the Sessions Judge having

concuurrent revisional jurisdiction had not been moved first; and in order to settle the practice to he followed in this Court in such matters. That the Sessions Judge has concurrent revisional jurisdiction under Section 435, Crl. P. C. in respect of the order now under revision before us, cannot be disputed. That this would not preclude the High Court from invoking or exercising its revisional powers, is also beyond dispute. But what is contended by the counsel for the petitioner is that the Sessions Judge cannot pass an effective order in revision, but must refer the case to the High Court under Section 438 of the Code to be dealt with under Section 439.

Even so, the question arises whether as a matter of salutary practice, and in the interests of the batter and efficient administration of justice, the party should first move the inferior Court having concurrent revisional Jurisdiction, before approaching the High Court The authorities on the question have been surveyed exhaustively in Veera Ramayya v. U. Venkita Seshavatharam, AIR 1936 Andh 97. We refrain from covering the ground again. Chief Justice Subba Rao, on a survey of the authorities noticed that the practice followed by all the High Courts except Madras, was not to entertain revisions directly in the High Court from orders of the Subordinate Magistrate, unless the aggrieved party in the first instance moved the Sessions Court or the District Magistrate's Court as the case may be, having concurrent revisional jurisdiction. The authorities referred to in the decision, make it clear that the rule of practice was followed even in respect of the orders which were revisable only under Section 435 of the Criminal Procedure Code. Chief Justice Subba Rao summarised his conclusions thus:

'17. On a consideration of the aforesaid points, we are of the view that the practice obtaining in all the High Courts, except in Madras, would carry out the intention of the Legislature and would better serve the interests of the public from the administrative and Judicial points of view.

18. We should not be understood to have laid down that the High Court has no jurisdiction to entertain a revision in the first instance. The Criminal Procedure Code in terms expressly confers the jurisdiction. Nor do we say that it is an inflexible rule of law that under no circumstances should the High Court entertain a

revision if the aggrieved party did not file a revision in the first instance in the inferior Court. Nor do we intend to lay down any rule, which, directly or indirectly affects the undoubted Inherent powers of the High Court to pan orders, to prevent grave and substantial injury to the parties.

But in our view the salutary practice to be followed in the High Court should be that ordinarily the High Court will not entertain a revision unless the aggrieved party approched an inferior Court in the first instance and will not deviate from that practice, except on special exceptional or extraordinary grounds. When there are no such grounds, the mere fact that a revision has been admitted by this Court cannot make any difference in the enforcement of the rule of practice, for the party who with open eyes ignored the practice and filed a revision direct in the High Court, cannot take advantage of his deviation from the rule of practice'.

It may be noted that the practice was settled in the above terms for the Andhra High Court in respect of an order under Section 145 of the Criminal Procedure Code which was revisable only under Section 435. The principle was reaffirmed by a Full Bench of the Andhra Pradesh High Court in A. Sriramamurthy v. State of Andhra Pradesh, AIR 1959 Andh Pra 377. We are in respectful agreement with the observations of Chief Justice Subba Rao quoted above, and they represent, in our view, the salutary practice to be followed in this High Court as well. The fact that it has not been followed here so far, is no reason why we should not commend and settle the same to be followed hereafter, especially as this case has been referred for settling the practice to be followed in such matters. We see no injustice in following the rule of practice laid down by the Andhra High Court as the same is sufficiently elastic to meet the requirements of any individual case.

2. We note that in this Court itself the principle of the Andhra decision was followed in Das Isaac v. Narayanan, 1958 Ker LT 1110 by Koshy C. J., and in Mohammed Bashir v. K. C. Itty, 1983 Ker LT 932, by Govinda Menon, T. The concurrent revissional power exeicisable by the Sessions Judge in those cases, were under Section 436 of the Crl. P. C., but that, to our mind, does not make any difference in laying down a rule of practice for this Court.

3. As we are settling the rule of practice to be followed in such matters by this Court only by our present ruling, we are not precluding the revision petitioner for not having moved the Sessions Judge in the first instance, and have heard the revision on the merits.

4. The short facts before the Sub Divisional Magistrate. Kunnamkulam, were that maintenance was claimed by the two revision petitioners, the first of them claiming to be the wife, and the second the son, of the counter-petitioner. The Magistrate disallowed the claim of the 1st petitioner on the ground that there had been a divorce bug prior to the claim, and that of the 2nd petitioner on the ground that:

'neglect in refusing to maintain him had not been established by evidence and that at any rate the 1st petitioner has no locus standi to claim maintenance on behalf of the 2nd petitioner'.

Locus standi was denied to the 1st petitioner, as she had been divorced by the counter petitioner.

5. Before us, only the claim for maintenance on behalf of the 2nd petitioner has been pressed. The Magistrate's reasoning that the 1st petitioner as a divorced wife of the counter-petitioner, has no locus standi to claim maintenance on behalf of the 2nd petitioner, was rightly conceded to be unsustainable by the counsel for the counter-petitioner. The locus standi of the 1st petitioner springs, not from her status as the wife of the counter-petitioner, but from her relationship and status as the mother of the boy (2nd petitioner).

6. We cannot endorse the finding of the Magistrate that neglect and refusal to maintain the 2nd petitioner has not been established by evidence. The proved and admitted facts are that the 1st petitioner and the counter-petitioner lived as husband and wife even since their marriage, unto 1960. There after the 2nd petitioner, who was first disowned by the counter-petitioner, was accepted in the house-hold of the counter-petitioner, was put to school as his son and was being maintained by the counter-petitioner. The 2nd petitioner, on the date of the petition, and for some time prior thereto, was living with the 1st petitioner. It is not the case of the counter-petitioner that he had maintained the 2nd petitioner during

this period. The fact remains that a registered notice claiming maintenance on behalf of the 2nd petitioner as well, was issued by the 1st petitioner (vide Ext. P-1) and was refused by the counter-petitioner as the cover itself disclosed that the 1st petitioner claimed the status as wife of the counter-petitioner.

But it was argued before us that the 2nd petitioner was taken away by the 1st petitioner and was being used by her for re-establishing her residence with the counter-petitioner by Insisting that the 2nd petitioner could stay with the counter-petitioner only along with his mother Assuming this to be so, we fail to see how that can relieve the counter-petitioner or his obligation to maintain the 2nd petitioner or how he could claim that there has been neither a failure nor a neglect to pay his maintenance. The Magistrate observed that 'the boy would be well advised to go back to his father's house to be maintained by the counter-petitioner at his own house-hold'. The fact of the boy's separate residence and the advisability of his going back to the father have little bearing on the question at issue before us. It was not contended that the counter-petitioner was bound to maintain the boy only if the boy lived with him. We hold that the counter-petitioner has neglected and refused to maintain the 2nd petitioner. The Magistrate had recorded a finding that the proper rate of maintenance would be Rs. 20/- per month for each of the petitioners. Little was said before us against the said finding.

7. We therefore allow this revision petition and direct the counter-petitioner to pay maintenance to the 2nd petitioner at the rate of Rs. 20/- per mensem, from the date of this Order.

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