

Lokesh Vs. Lekha Lokesh

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Court : Kerala

Decided On : Jan-05-1995

Reported in : 1995(2)ALT(Cri)495; II(1995)DMC75

Judge : K.P. Balanarayana Marar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125 and 125(2)

Appeal No. : Crl. M.C. 1612 of 1994

Appellant : Lokesh

Respondent : Lekha Lokesh

Advocate for Def. : None

Advocate for Pet/Ap. : U.P. Kunikullaya, Adv.

Disposition : Petition dismissed

Judgement :

K.P. Balanarayana Marar, J.

1. The order of Chief Judicial Magistrate, Kasaragod awarding maintenance to respondent and confirmed by the Sessions Court in revision is challenged in this Crl. Miscellaneous Case.

2. Respondent moved the Magistrate by M.C. No. 22 of 1991 claiming maintenance at the rate of Rs. 500/- per month alleging that petitioner who had married her on 28.12.1986 had left her at her house and had refused and neglected to maintain her. Petitioner resisted the claim on various grounds. He contended that respondent was a woman of weak intellect and the marriage was null and void for mat reason. He further contended that an important ceremony, 'Dhara ceremony', was not conducted and the marriage was thus void for that reason. He disclaimed liability to pay maintenance and questioned the correctness of the amount claimed. The Magistrate on an appreciation of the evidence on both sides found petitioner liable to pay maintenance and directed him to pay a sum of Rs. 300/- per month. This amount was ordered to be paid from the date of the petition. The Sessions Court on revision agreed with the findings of the Magistrate and declined to interfere. Hence this Crl.M.C. under Section 482 of Code of Criminal Procedure.

3. Heard Counsel for petitioner. The main contention advanced by learned Counsel for petitioner is that the Courts below have committed an illegality in finding that a valid marriage relationship existed between the parties. The specific contention advanced by petitioner before the Magistrate was that 'Dhara Ceremony' which is the most crucial and important ceremony was not performed and no evidence was adduced by respondent to prove performance of that ceremony. The Magistrate and the Sessions Judge repelled this contention and according to me, for proper reasons. Respondent as PW 1 has spoken about the performance of this ceremony. True, petitioner has denied that fact. The Trial Magistrate placed reliance on the testimony of PW 1 and found the Dhara Ceremony to have been performed. The Sessions Court observed that the Magistrate was right in choosing to accept the oral evidence of PW 1 on this aspect. No error has been committed by the Courts below in holding so. Moreover, there was satisfactory evidence on record to show that parties had gone through religious rites and ceremonies with the intention of becoming man and wife and had lived together as husband and wife thereafter. Exts. P-1 and P-2 are the invitation cards got printed by the parents of the bride and bridegroom inviting people for the marriage. Exts. P-3 to P-7 are the photographs taken on the occasion of marriage along with the negatives. Respondent was able to produce

sufficient and satisfactory material to show that a valid marriage has taken place between the parties and they had gone through the religious rites and ceremonies in connection thereto. The plea that Dhara Ceremony was not performed and for that reason the marriage is invalid was rightly discounted by the Courts below.

4. Counsel has raised a further contention that the Magistrate has committed an error in directing petitioner to pay maintenance from the date of the petition. According to him, the allowance should have been made payable only from the date of the order. It is also pointed out that special reasons had not been given by the Magistrate why a direction was given to pay maintenance from the date of the petition. The Sessions Judge has expressed unhappiness over the failure on the part of the Magistrate to advert to reasons that prompted him to exercise the discretion in favour of the respondent. Still, the Sessions Judge refused to interfere on that aspect also. On hearing Counsel and on an interpretation of Sub-section (2) of Section 125 of the Code of Criminal Procedure, the direction of the Magistrate is found to be perfectly justified and it was not right on the part of the Sessions Judge to have expressed unhappiness on the discretion exercised by the Magistrate.

5. Sub-section (2) of Section 125 of the Code stipulates that the allowance ordered under Sub-section (1) shall be payable from the date of the order or if so ordered, from the date of the application for maintenance. The section does not insist for any reasons to be given by the Magistrate when the allowance is ordered to be paid from the date of the application, though such allowance shall ordinarily be payable from the date of the order. A learned Judge of this Court in the decision in *Lakshmikutty Amma v. Balan Pillai*, 1989(2) KLT 503=II (1989) DMC 486, observed that there must be specific direction to that effect for the order to be operative from the date of the application and that direction can be given only by proper exercise of judicial discretion. It is further that diserved that it must be on an appreciation of the overall situation in which the parties are placed. The Court can after taking into consideration the circumstances of the case and the financial capacity of the parties to the petition direct payment to be effective from the date of application for maintenance as well though ordinarily an order granting maintenance is to be operative from the date of the order. With respect, I disagree

with these observations since Sub-section (2) of Section 125 of the Code does not insist for giving any reason by the Magistrate when he directs payment of allowance from the date of the application. What is required is only an order by the Magistrate for payment of allowance from the date of the application. If no such order has been passed, the allowance shall be payable only from the date of the order. The Magistrate is not expected nor does Sub-section (2) of Section 125 insist for giving reasons as to why the allowance is directed to be paid from the date of the application. The position therefore is that the Magistrate is given a discretion under that sub-section either to grant the allowance from the date of the order or from the date of the application. In case the Magistrate has not stated either way, the allowance is payable only from the date of the order.

6. In this view I am supported by the decision of this Court in *Mani v. Esther*, 1980 KLT 969. It was held therein that Sub-section (2) Section 125 of the Code means only that where Court has not specifically directed that the order shall take effect from the date of the petition or where the order is silent on the point, it shall be payable from the date of the order. I cannot be said that whenever a Court gives a specific direction either way it must be supported by reasons recorded in writing. It is open to the Court to take either view and incorporate it in the judgment. It was further held that considering the purpose of the provisions of Chapter IX of the Code and the specific object they seek to achieve, the Court has full discretion to direct that the allowance is payable from the date of the petition.

7. I am in respect agreement with the views expressed by Bhat, J. (as he then was) in Muni's case (*supra*) which is not seen to have been brought to the notice of the learned Judge in *Lakshmikutty Amma's case* 1989(2) KLT 503.

8. The quantum of maintenance awarded is also excessive according to Counsel and the income of the respondent was not taken into consideration while determining the quantum. The Magistrate as well as the Sessions Judge had considered this aspect and the allowance was determined on the basis of the income of petitioner and other relevant circumstances. No document is seen to have been produced on the side of petitioner to show that respondent is possessed of means or was getting any income. No interference is therefore

called for in a petition under Section 482 of the Code on this aspect.

9. For the aforesaid reasons, the Crl.M.C. is dismissed.

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