Hameed Vs. Ameena

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SooperKanoon Citation : sooperkanoon.com/723869

Court : Kerala

Decided On : Nov-26-1985

Reported in : 1986CriLJ1805

Judge : S. Padmanabhan, J.

Appellant : Hameed

Respondent : Ameena

Judgement :
ORDER

S. Padmanabhan, J.

1. In a proceeding under Section 125 of. the Cr. P.C. the trial Court and the revisional Court concurrently found that the petitioner is liable to pay maintenance to the respondent, his divorced wife. Trial Court fixed the rate at Rs. 100/- per month but the Sessions Judge, in revision by the petitioner, reduced it to Rs. 70/-. Parties are muslims and are admittedly divorced. Petitioner challenged the marriage itself as void on the allegation that it took place when the respondent had her former husband living and the marriage subsisting. That contention was found against and given up also. The second revision was admitted to the limited extent of considering the quantum of maintenance awarded,

2. I am of the view that the revision itself is not maintainable. Though the revision petitioner in this respect sought support from the Full Bench decision in Sivan Pillai v. Rajamohan 1-978 Ker LT 223 : 1978 Cri LJ 743. I do not think that the decision has anything to do with that question. That decision was only considering the effect of the bar under Section 399(3) of the Cr. P.C. in relation to the option allowed under Section 397(1). It was held that in view of the bar under Section 399(3) the option under Section 397(1) would be rendered nugatory if a rule of salutary practice is imported that the party should approach the Sessions Judge first before moving the High Court in revision. The revisional jurisdiction of the Sessions Judge and the High Court under Section 397(1) are concurrent. The option is on the aggrieved party to decide whether the Sessions Judge or the High Court has to be moved. Ordinarily when more than one forum is having jurisdiction the approach should be to the court lowest in strata. One of the objects of such a rule is to see that the concerned party is not deprived of the chances of appeal or revision. But when Section 397(1) is read along with Section 399(3) it is evident that so far as the person who filed the revision before the Sessions Judge is concerned the decision of the Sessions Judge is final and no further revision will lie to the High Court at his instance. It is in this context that 1978 Ker LT 223 : 1978 Cri LJ 743 (FB) held that insistence on the revision being filed first before the Sessions Court will render the option under Section 397(1) nugatory because that party has no further right to approach the High Court in revision, The purport of that decision is that a party aggrieved by the order of an inferior Court is having the full discretion to choose either the Sessions Court or the High Court 'as the forum to approach in revision in the first instance.

3. But the question for consideration in this revision petition is whether a second revision at the instance of the same party is maintainable or not. The contention of the revision petitioner seems to be that the bar under Section 399(3) will operate against the person who approached the Sessions Judge in revision only if the revision is dismissed by the Sessions Judge in toto confirming the order sought to be revised. In other words the contention is that the bar will not apply if the order is set aside or modified by allowing the revision in whole or in part. That contention appears to be meaningless. It is not appealing to reason or commonsense to think that the legislature intended to confer some right to a party who succeed in full or

part while negativing such right to a defeated party. The object of the provision contained in Section 399(3) is to avoid law's delays by limiting the change of revision to one for the same person. The experience of the Sessions Judge who decides the revision may be another reason. In this case the revision filed by the selfsame revision petitioner was allowed by the Sessions Judge in part reducing the rate of maintenance from Rs. 100/- to Rs. 70/-. This modification to the advantage of the revision petitioner is the sole basis of his claim that the bar under Section 399(3) is not applicable to him and he can come in second revision. He concedes that if the revision was dismissed in toto without interfering with the order of the Magistrate he would not have been able to come up in revision. I do not understand the logic behind such a contention.

4. The bar under Section 399(3) is not dependant on the nature of the order passed by the Sessions Judge in revision. If a revision petitioner whose claim was partly allowed by the Sessions Judge in revision is entitled to file a second revision to the High Court one fails to understand why and how such a right could be denied to a defeated revision petitioner who stands on a worse footing. The object of the bar is to deny a second chance of revision to the same person. What the sub-section says is that where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge, thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be enteritained by the High Court or any other Court. The right is not at all made dependent on the nature of the order in revision whether it is in favour or against the person who filed the revision. The bar is in relation to the person who availed of the chance of revision and opted to file the same before the Sessions Court, whatever be the decision. When once a person has filed a revision against an order before the Sessions Judge and courted a decision, irrespective of the nature of the order or its impact on him he has no further right of revision. But the position is different so far as the party who has not moved the Sessions Judge is concerned. The second revision prohibited under Section 399(3) is only by the person who approached the Sessions Judge. If the opposite party who was satisfied with the order kept quiet without moving the Sessions Judge in revision, but his rival approached the Sessions Judge in revision and got the order set aside or modified, then the order is to his

disadvantage and the bar under Section 399(3) is not applicable to him. He can come up in revision before the High Court because he has not filed any revision before the Sessions Court and further because he is aggrieved by the order of the Sessions Judge for challenging which he is not prohibited under Section 399(3). The argument of the counsel for the revision petitioner that when the order of the Magistrate is modified by the Sessions Judge in revision, the order of the Magistrate is no longer in existence and what is there is only the order of the Sessions Judge and hence there cannot be any bar to challenge that order does not appeal to reason. Section 399(3) does not admit of any doubt.

5. In this connection, even though not very much relevant for our purpose, it has to be understood that the provisions of Section 125 of the Cr. P.C. was introduced by way of public policy in order to avoid vagrancy by a speedy and summary procedure. Magistrates and Sessions Judges are responsible and experienced judicial officers. When the eligibility for maintenance and the rates are considered by the Magistrates and Sessions Judges, normally no further opportunity for challenge need be made available in the High Court. This is of course subject to the right of a party who did not file a revision before the Sessions Judge but courted an adverse decision in a revision filed by the opposite party. Second revisions by the same party and petitioner under Section 482 of the Cr. P.C. challenging orders of maintenance lawfully made will have the effect of defeating the policy behind the insertion of Section 125.