

State of Kerala Vs. Vimala

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Court : Kerala

Decided On : Mar-30-1961

Reported in : 1962CriLJ443

Judge : P. Govinda Menon, J.

Appellant : State of Kerala

Respondent : Vimala

Judgement :

ORDER

P. Govinda Menon, J.

1. This is a reference made by the learned Sessions Judge of Qulin recommending that the order of the learned Magistrate directing the counter-petitioner In M. C, .12 of 11231 (M. E-) to pay maintenance at the rate of Rs. 10/- per mensem Under Section 488 Criminal Procedure Code, be set aside as there is no executable order-

2. What happened in the case was that pending the proceedings in count the parties filed a compromise petition and stated in Court that they had compromised the matter and the learned Magistrate passed an order striking off the case from the file- The correct order that ought to have been passed by the learned Magistrat was 'Petition on compromise filed. Order in terms of the compromise.'¹ That would

have meant that there was an order for the payment of the amount in terms of the petition of compromise and would have put the matter beyond all doubt that the provisions of Section 488 (3) Criminal Procedure Code could be invoked in order to secure the carrying on of what the parties had agreed to do. It is unfortunate that no such order was passed by the Court.

3. Authority for the position that the correct order must be as stated above may be had in the decision reported in *Debjani Biswas v. Rasik Lai Biswas* A.I.R. 1941 Cal 558; *T. K. Thayumanavar v. Asanambal Ammal* A.I.R. 1958 Mys 190; *G. P. Sundaram v. Rathnavathi Ammal* 1955 Andh WR 441 and *Rama Bai v. Bhoja Rao* 1937 Mad WN 640.

4. The only decision brought to my notice which takes a contrary view is the decision in *Sham Singh v. Mt. Hakum Devi* A.I.R. 1930 Lih 524 where his Lordship Adison, J., held that 'where the parties have arrived at a compromise in the proceedings Under Section 488 Criminal Procedure Code, the Civil Court was the proper forum to enforce the compromise and the same could not be enforced by the criminal court. I respectfully do not agree with this view. The only reason assigned for the view that a compromise made Under Section 488, Criminal Procedure Code could not be enforced by the criminal courts is that upon entering into such a compromise it could no longer be said that 'the husband neglects or refuses to maintain' his wife.

When a husband refuses or neglects to maintain his wife the latter makes an application Under Section 488 Criminal Procedure Code. If on the date of the application her allegations in the application were true they do not become untrue merely because during the pendency of these proceedings parties come to terms as to the amount of the maintenance allowance that should be allowed to the wife. The compromise arrived at in these circumstances merely denotes) that the parties agreed as to what is the amount that should be paid. It does not imply that the husband had not neglected or refused to maintain his wife when the petition was made. After the compromise has been arrived at, the Court has still to pass an order. If it passes an order in terms of the compromise then it will be that order and not the compromise that is sought to be enforced subsequently. The criminal

court has every jurisdiction to enforce its Own order even though it was passed on the basis of a compromise arrived at between the parties.

5. As the Order now stand I am tempted to agree with the learned Sessions Judge that there is no executable order. Mr. K. G John who was kind enough to appear as Amicus Curiae for the wife, who had not entered appearance, has brought to my notice the decision in A.I.R. 1941 Cal 558. In that case the compromise petition put in court is extracted in the decision. It will be seen therefrom that even in the compromise petition apart from fixing the amount of maintenance it was agreed that in default of payment the wife would be at liberty to realise the amount by execution 'according to law' and their Lordships stated that the words 'execution according to law' would clearly indicate that the provisions of Section 488 (3) Criminal Procedure Code, would apply and that the Court could levy the execution in respect of the amount which the husband had agreed to pay. That case may not strictly apply to the facts of this case, because in this case the assistance of the Court was not even sought for and no provision was made as to what would happen if default is made.

6. The order in this case is therefore un-executable. It will be open to the petitioner to file a fresh application for maintenance because if the order on the basis of a compromise is unenforceable a second application would lie under Section 488 Criminal procedure Code. The reference is answered accordingly. The order of the learned Magistrate of Karunagappally dated 27-7-1960 is set aside.

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