

A. Achuthan Vs. Yooseph

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Court : Kerala

Decided On : Sep-15-1972

Reported in : 1973CriLJ540

Judge : V. Khalid, J.

Appellant : A. Achuthan

Respondent : Yooseph

Judgement :

ORDER

V. Khalid, J.

1. The defendant-judgment-debtor in O.S. No. 6 of 1963 of the Munsiff's Court, Palghat, initiated proceedings before the Munsiff's Court, Irinjalakuda, under Section 476 read with Section 195 of the Code of Criminal Procedure for prosecuting the plaintiff-decree-holder in the said suit for offences punishable under Sections 177, 181 and 199 of the Indian Penal Code. The accusation against the plaintiff was that he swore to a false affidavit in the course of the execution proceedings to mislead the Court and to insult the defendant so as to secure an order of attachment in execution. The learned Munsiff invoked Section 479-A. Sub-section (6) of Cr.P.C. as the appropriate section governing the matter in controversy and held that the petition was without any bona fides. The learned Munsiff considered the various accusations levelled against the plaintiff by the

defendant and found that they were absolutely false and observed:

Taking into account all these circumstances stated above I have no hesitation to find that this petition is a clear abuse of the process of the Court and the allegations made in the affidavit are false and vexatious to the knowledge of the Petitioner.

While dismissing, the petition, the learned Munsiff awarded compensatory costs of Rs. 250/- to be paid to the decree-holder as he was satisfied that the frivolous and vexatious petition filed by the defendant had caused unnecessary hardship to the plaintiff. It is this portion of the order that is the subject-matter of this revision.

2. The only contention raised before me by the learned Counsel for the petitioner is whether the Court has jurisdiction to award costs while disposing a petition under Section 476 or 479-A.

3. The position of law appears to me to be clear that the jurisdiction for the Munsiff in deciding such cases is the one specially conferred on him by the relevant provisions of the Code of Criminal Procedure, and unless those provisions confer the additional jurisdiction to award costs, no order for costs can be passed.

4. In *Jarbandhan v. Emperor* AIR 1946 All 245 it is observed:

A Court has no power to direct payment of costs in proceedings connected with an application under Section 476 even if such proceedings are taken in a civil court. Hence, no costs can be awarded in an appeal under Section 476-B by the Civil Court.

In *Kheyali Singh v. Nunu Lal Singh* AIR 1947 Pat 138 : 47 Cri LJ 707 the Patna High Court has observed:

The Criminal Procedure Code does not contemplate the award of costs in proceedings under Section 476. When a civil Court takes action under Section 476, it exercises powers conferred on it by the Criminal Procedure Code and its proceedings are governed by the provisions of that Code. The civil Court has no inherent power to initiate a prosecution in respect, of offences to which Section

476 applies. It derives its jurisdiction to do so from the Criminal Procedure Code and its procedure must, therefore, be governed by the provisions of that Code. As the Criminal Procedure Code does not contemplate the award of costs in such cases, even the Civil Court has no power to make an order for costs.

In *Gulappa v. Election Officer, N.T. Panchayat* AIR 1965 Mys 62 which was a case under the Mysore Village Panchayats and Local Boards Act, 1959, an analogous question came up for consideration before a Division Bench of the Mysore High Court. The relevant portions of the judgment are extracted below.

The powers of a Civil Court under Section 13(2) of Mysore Village Panchayats and Local Boards Act (1959) to award costs do not include the power to award costs either under Section 35 or under Section 35-A of the Code of Civil Procedure, If the power under Section 35 or under Section 35-A had been included in the powers of a Civil Court, the further provision empowering the Munsiff to award costs would be redundant.... Compensatory costs do not stand on the same footing as costs which are ordinarily incidental to litigation.

As specific provision is made in Section 13(2) of the Act in regard to costs. Election Officer cannot be granted any relief by way of compensatory costs Under Section 35-A of Civil P.C. though the allegation made in election petition that the Election Officer had altered the roll number in nomination paper of petitioner with ulterior motive had proved baseless and it was false, vexatious and mischievous to the knowledge of the candidate-petitioner

I am in respectful agreement with the principles enunciated in the above decisions. The procedure under Section 476 or 479A is the one prescribed by the Code of Criminal Procedure and the Civil Court gets jurisdiction to go into such proceedings only by virtue of such jurisdiction. I do not think it is correct to say that a civil Court even when trying such cases has inherent jurisdiction to award costs in appropriate cases.

5. There are provisions in the Criminal Procedure Code where payment of compensation is provided for. Sections 250 and 488(7) are two such. No1 similar provision is made by the Criminal Procedure Code in an enquiry under Section

476 or 479-A.

6. The sections dealing with costs in the Civil Procedure Code are 35 and 35-A. Section 35 provides for payment of costs in suits etc. The expression used is, 'costs of and incident to all suits shall be in the discretion of the Court,' It is also specifically provided therein that the fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers. In Section 35-A. the opening sentence is. 'if in any suit or other proceeding, including an execution proceeding but excluding an appeal.' This would also indicate that what is contemplated is, suits and other incidental proceedings and not any proceedings of the nature that we are in this case confronted with, I have adverted to this aspect of the case to meet the contention of the learned Counsel for the respondent that in every matter that comes before a civil Court, the Court can order costs. This contention cannot be sustained. Proceedings under Sections 476 and 479-A are special proceedings, jurisdiction for which is conferred by the Criminal Procedure Code and hence are outside the purview of Section 35 and Section 35-A of the Civil Procedure Code.

7. Under these circumstances the order passed by the learned Munsiff directing the amount of Rs. 250/- by way of compensatory costs to be paid by the petitioner to the respondent' is clearly without jurisdiction. This may cause hardship to parties, but unless there is clear conferment of powers to award costs the order cannot be sustained.

There is clearly an error of jurisdiction committed by the Court below. Hence the order directing costs to be paid to the respondent is set aside. The civil revision petition is allowed. No costs.