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Court : Kerala

Decided On : Nov-30-1993

Reported in : 1994CriLJ1413

Judge : K.T. Thomas, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 125, 125(3) and 421 to 423

Appeal No. : Crl. R.P. No. 299 of 1990

Appellant : Bhagavathy Radha and anr.

Respondent : Narayanan Kamalasanan

Advocate for Def. : Siby Mathew and; Wilson Urmese, Adv.

Advocate for Pet/Ap. : S. Subramani and; M. Balagovindan, Adv.

Disposition : Revision allowed

Judgement :

ORDER

K.T. Thomas, J.

1. A destitute wife obtained an order under Section 125 of the Code of Criminal Procedure (for short 'the Code') as early as July, 1980 fixing the monthly maintenance allowance at Rs. 100/- after much haggling. But even that amount remains a mirage for her as the successive applications made by her for recovery of the arrears amount reached cul de sac. This is the third tier in the judicial hierarchy she climbs like a mendicant even for the modicum. The third application filed by her was seemingly out of time but it was salvaged by the Magistrate who treated it as continuation of the earlier application. However, the Sessions Judge in revision has held that it is irretrievably out of time. Hence she has come to this Court with the present revision petition.

2. The order to pay maintenance allowance passed by the Judicial Magistrate remained abeyance till August, 1981 due to the pendency of a revision in the Sessions Court. Travails of the petitioner really began thereafter as she had to launch the process for enforcement of the order. Three applications were filed by her and all the three were dismissed on account of failure of the respondent to appear.

3. First application was filed on 26-7-1982 for arrears due from 19-7-80 to 19-7-82. It was not beyond time since the earliest monthly instalment of the allowance became due only after August, 1981 when the Sessions Court dismissed the revision petition. A second application was filed on 25-8-83 for the subsequent period (from 19-7-82 to 19-7-83). But both applications were dismissed on 11-11-1983 as the magistrates concerned could not get the defaulter husband. She then repeated her prayer through another application filed on 22-6-84 in which she claimed arrears from 19-7-80 onwards till the previous month of that application (i.e., 19-5-

84). But that also met with the same fate on 24-1-1985.

4. The present dispute is the out come of her fourth application (CMP No. 4234/88 in the first Court) which she filed on 17-9-88 in which she prayed for realisation of the arrears claimed in the previous application. This time the Magistrate succeeded in getting the defaulter in court, but he raised a plea that the Magistrate could not enforce the order in regard to the amount which fell in arrears beyond one year previous to such application. Learned Magistrate repelled such objections holding that since she filed the first application within time the present application (CMP No. 4234/88) is only to be treated as one for revival of proceedings on the earlier applications.

5. The defaulter husband took up the matter in revision before the Sessions Court. Learned Sessions Judge upheld his objections and dismissed CMP No. 4234/88. According to the learned Sessions Judge, "the present petition (CMP No. 4234/88) filed after such a long lapse of time cannot reasonably be considered to be an extension the earlier application, especially when no valid reasons are forthcoming as to why the relief was not sought for during the period 24-1-1988 to 17-9-1988'. Legality of the said decision is challenged now.

6. Section 125(3) of the Code deals with enforcement of the order passed under subsection (1). The Magistrate is empowered to issue a warrant for levying the amount due in the manner provided for levying fines. He is also empowered to sentence the defaulter to imprisonment for a term which may extend to one month or until payment is sooner made. The proviso to sub-section (3) is the hub and it reads thus:

'Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due'.

The application envisaged in the proviso is for levying the amount. The word 'levy' employed in the sub-section means 'to collect by authority or by force' (vide Oxford Advanced Learner's Dictionary of Current English). Once an application is filed it is for the Court to take such steps as may be necessary for realising the amount due 'in the manner provided for levying fines'. Sections 421 - 423 of the Code contain provisions for levy of fine. Two modes are prescribed for levy of fine. One is by issuing a warrant for attachment and sale of movable property of the defaulter. Another is by issuing warrant to the District Collector authorising him to realise the amount as arrears of land revenue from the movable or immovable property or both of the defaulter. When the Court issues warrant to the District Collector, he shall realise the amount 'in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law'. If the amount remained unrealised, Section 125(3) empowers the Magistrate to sentence the defaulter to imprisonment for a term which may extend to one month for each month's allowance or part of it, or until payment.

7. A scrutiny of the provisions would indicate that petitioner's duty to make the application (to levy the amount) within one year from the date on which the amount became due and once that duty is discharged it is the function of the Court to take steps on it until it reaches its normal culmination.

8. If a Court dismisses the application to levy the amount without exhausting steps envisaged in the provisions, it would be hard for the petitioner to suffer the consequences. In such circumstances, a second application, if made by the petitioner, must be treated as one for restoration or revival of the earlier application. No time limit can be fixed for making the application for such restoration or revival, though it is desirable that the affected party moves the Court without unreasonable delay. On the first application filed within time the Court has to exhaust steps envisaged in the provisions to levy the amount. If the application happened to be dismissed without exhausting such steps, it would not be a judicial disposal. Such dismissal could only amount to consignment of the application to the records for statistical purposes. The application would then remain in suspended animation albeit the use of the word 'dismissed' stamped on it. It could be resuscitated to life through a subsequent application.

9. A similar view was adopted by Narasimham, C.J. in Jagat Bandhu v. Lakshmi Dei, 0065/1958 : AIR1958Ori257 following an earlier decision in U. Hpay Latt v. Ma Fo Byu, AIR 1935 Rangoon 407 : (1936 (37) Cri LJ 91). a single Judge of the Madhya Pradesh High Court has also took the same view in Kirparam v. Kalibai, : AIR1960MP241 . Learned Sessions Judge, before whom the above two decisions were cited, declined to follow the ratio therein on the reasoning that the interrugnum between dismissal of the earlier application and filing of the subsequent application was very short in both the above cases whereas the interrugnum in the present case is far too long. I don't think that length of time in filing the second application can legitimately be regarded as a criterion for treating the second application as incapable of reviving or continuing the proceedings on the earlier application which was filed within time.

10. Legal position being the above, I set aside the order of the learned Sessions Judge and restore the order passed by the Magistrate who is directed to take further steps in the matter.

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