

Chandran Vs. Prakashan

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Court : Kerala

Decided On : Jun-13-2005

Reported in : II(2005)DMC595; 2005(4)KLT1038

Judge : M. Sasidharan Nambiar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125 and 127; Legal Service Authorities Act - Sections 20

Appeal No. : Crl. M.C. No. 2603 of 2004

Appellant : Chandran

Respondent : Prakashan

Advocate for Def. : P.M. Habeeb, Public Prosecutor and; K.V. Sohan, Adv.

Advocate for Pet/Ap. : C.P. Peethambaran, Adv.

Disposition : Petition allowed

Judgement :

ORDER

M. Sasidharan Nambiar, J.

1. The interesting question to be decided is whether an award passed by the Lok Adalath directing payment of maintenance allowance under Section 125 of Code

of Criminal Procedure can be altered as provided under Section 127 of the Code. Petitioner approached Judicial First Class Magistrate, Thalassery claiming maintenance from his son, first respondent under Section 125 of Cr.P.C. Case was numbered as M.C. No. 72/99. When the matter was pending before the learned Magistrate as requested by the father and the son, it was referred to Lok Adalath for a decision. Lok Adalath passed an award providing that first respondent has to pay a monthly maintenance at the rate of Rs. 150. That order was passed on 6.7.2000. Subsequently, petitioner filed M.C. No. 96/01 before the Magistrate claiming enhancement of maintenance under Section 127 of Cr.P.C. First respondent son filed M.C. No. 108/01 to cancel the award passed in M.C. No. 72/99 contending that father had acquired means subsequently to the award of the Lok Adalath. Learned Magistrate as per order dated 7.2.2003 dismissed M.C. No. 108/01 and enhanced the maintenance from Rs. 150/- to Rs. 400/- in M.C. No. 96/01. Petitioner challenged the award in Cr.R.P. No. 150/03. As per order dated 6.4.2004 learned Additional Sessions Judge dismissed revision as not maintainable and at the same time set aside the order in M.C. No. 96/01 holding that as the award was passed by Lok Adalath, it could not have been varied or modified under Section 127 of Cr.P.C. This order is challenged by petitioner contending that when learned Sessions Judge found that revision itself is not maintainable, no interference should have been made on the order of learned Magistrate. It is also contended that learned Sessions Judge grossly erred in setting aside the award of the learned Magistrate passed under Section 127 of Cr.P.C. and learned Magistrate is competent to enhance the compensation if the conditions under Section 127 of Cr.P.C are satisfied.

2. Heard learned counsel appearing for petitioner and first respondent.

3. As rightly pointed out by learned counsel appearing for petitioner, learned Sessions Judge has not properly considered the question. When an order of maintenance is passed under Section 125, even if it has become final, it will not effect the right of the parties or the power of Court, as provided under Section 127 of Cr.P.C. If the conditions provided under Section 127 of Cr.P.C are satisfied learned Magistrate is entitled to exercise his powers either to enhance, or to reduce or even cancel the maintenance as provided therein. Therefore, the finality

or otherwise of the award of Lok Adalath granting maintenance is not a relevant aspect to decide whether power under Section 127 is to be exercised or not to alter the maintenance allowance granted under Section 125. Unfortunately, learned Sessions Judge did not borne in mind the purpose for which Section 127 of Cr.P.C was enacted and was carried away by finality of an award of Lok Adalath as provided under Section 20(i)(ii) of Legal Service Authorities Act.

4. Learned Sessions Judge has not considered the question whether the enhancement of maintenance granted by learned Magistrate in M.C. No. 96/04 is justified or not. Instead, the revision was dismissed and the order of enhancement granted under Section 127 of Cr.P.C was also cancelled on the wrong premise that the award passed by Legal Service Authority being final would remain for ever. The legal position is not correct. Irrespective of finality of the award passed by Adalath maintenance allowance agreed and granted in Adalath is liable to be varied, modified or cancelled in an application filed under Section 127 of Cr.P.C. Hence the order of learned Additional Sessions Judge in Cr.R.P. No. 50/03 is set aside. Learned Additional Sessions Judge is directed to dispose the revision afresh in accordance with law expeditiously, in the light of observations made above. Parties are directed to appear before the learned Additional Sessions Judge, Thalassery on 30.6.2005.

Petition is allowed.