

Chathapopantavida Balan Vs. Chathappantavida Devi

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Court : Kerala

Decided On : Dec-19-2008

Reported in : 2009(1)KLT52

Judge : R. Basant, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 125, 125(3), 125(4), 125(5) and 127

Appeal No. : RPFC. No. 378 of 2008

Appellant : Chathapopantavida Balan

Respondent : Chathappantavida Devi

Advocate for Def. : No Appearance

Advocate for Pet/Ap. : Santharam. P, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

R. Basant, J.

1. Is a child against whom the parent stakes a claim for maintenance under Section 125 Cr.P.C entitled to contend that the parent must reside with him/her to

justify such claim Are Sections 125(3) (second proviso), 125(4) and 125(5) applicable impliedly to the claim of a parent? These questions are raised in this R.P.F.C by the learned Counsel for the petitioners.

2. Petitioners were respondents in a claim under Section 125 Cr.P.C staked before the Family Court by the respondent herein, who is the wife of the 1st petitioner and the mother of the 2nd petitioner. The learned Judge of the Family Court had directed the 2nd petitioner alone to pay an amount of Rs. 750/- per mensem as maintenance to the claimant/respondent. The claim against the 1st petitioner was refused. There is no challenge against that. The 1st petitioner has come to this Court with this petition only to give company to his son, the 2nd petitioner. I find no other purpose at all.

3. Status of the respondent as the mother of the 2nd petitioner is admitted. That she is residing separately is admitted. That she is residing in a house belonging to the 1st petitioner, which has been allegedly assigned by him in favour of the 2nd petitioner is also not disputed. Of course, it is submitted that there is litigation between the parties on the validity of such an assignment. The claimant is residing in that house along with her daughter and son in law.

4. The mother claimed that she is unable to maintain herself. She claimed maintenance from both the petitioners. The petitioners resisted the claim for maintenance on the ground that the claimant is residing separately along with her daughter and son in law without any justifiable excuse. She is not coming and living with the petitioners. She is not permitting the petitioners to reside along with her in the house. There was a further contention that another son of the claimant was killed in a motor accident and that she has staked claim for compensation before the court. Admittedly except an initial payment of Rs. 25,000/-, the balance of compensation has not been received by her. The learned Judge of the Family Court on an anxious consideration of all the relevant circumstances came to the conclusion that the 2nd petitioner is liable to pay maintenance @ Rs. 750/- per mensem to the claimant.

5. The 2nd petitioner claims to be aggrieved by the order. What is the grievance Arguments have been heard in detail for admission. The learned Counsel for the

petitioners assails the impugned order on various grounds.

6. First of all it is contended that the claimant is residing separately without sufficient cause. The contention stems from a very basic misconception that like the wife the mother is also bound to stay with the child from whom she claims maintenance to justify her claim. There is nothing in the provisions of Section 125 Cr.P.C which can even remotely suggest that a child against whom the claim for maintenance is staked by the parent can resist the claim successfully on the plea that the parent is refusing to live with him/her. Such a plea is not recognised by law at all. Individuality of the hapless parent is recognised by law and the law does not oblige or compel such claimant/parent to necessarily reside with the child to entitle him/her to claim maintenance. The absence of a provision similar to Section 125(3) (its second proviso), 125(4) and 125(5) Cr.P.C in respect of the parents is in this context significant. I am certainly of the opinion that the law permits the parent to claim maintenance from the child and it is not a defence for the child to contend that the parent is not residing with him and that he/she will maintain the parent only if the parent is so willing to reside with him. Such a plea is not available to a child facing the claim for maintenance of the parent. Under Section 125 Cr.P.C a father, mother, wife and children are entitled to claim maintenance. But it is significant that the legislature has advisedly chosen to make Section 125(3) (i.e. its second proviso), (4) and (5) applicable only to wives and no others. The classification is deliberate and justified absolutely considering the very special and different nature of the relationship between the spouses. The fundamental matrimonial obligation of the spouse to cohabit is recognised and respected in Chapter IX of the Code. The conclusion is inevitable from the scheme of Section 125 Cr.P.C that the parent, wife or child is entitled to be maintained wherever they are. The obligation of a person having sufficient means to maintain his parent, child or wife does not ordinarily depend on the place of residence of such parent, child or wife. But in so far as the wife (alone) is concerned, the law stipulates in Section 125(3) (its second proviso), (4) and (5) that if a husband offers to maintain his wife on condition that she lives with him and she refuses to accept such offer, he will be liable to pay separate maintenance only if she has sufficient reason/just ground to justify such separate residence. Going by the language of Section 125 Cr.P.C or its broad scheme, it is not possible to assume that all claimants are

bound to accept such an offer to maintain on condition of cohabitation or that they are bound to show sufficient reason or just ground to justify the refusal to so cohabit. It is not possible to assume that the expression 'wife' in Section 125(3) (second proviso), (4) and (5) impliedly includes all claimants. It would be irrational, artificial and unjust and consequently impermissible to include all claimants within the sweep of the expression 'wife' in those sub sections. This question was considered and answered in favour of the parent in the decision in *Selvan Singh v. Nagamani* : 2006(4)KLT125 in para.9.

7. The learned Counsel for the petitioners then contends that the claimant is not a woman unable to maintain herself. It is first of all urged that she is residing with the daughter and that the daughter and son in law are looking after her. The daughter admittedly is only a house wife and is not a person having sufficient means of her own. She herself is totally dependent on her husband. The mere fact that a parent driven to the wall, who is not maintained by either her husband or son, has taken shelter in the residence of her daughter and is depending on the charity of her husband is no reason to conclude that such parent is not unable to maintain herself. It may be true that the daughter and the son in law out of charity is saving such parent from hunger, but that is no reason to conclude that such parent is not unable to maintain himself/herself.

8. It is next contended that another son of the claimant had expired in a motor accident and a claim for compensation is staked before the Motor Accident Claims Tribunal. Admittedly till now no substantial payment has been received by the claimant. If and when she receives such compensation and if such compensation is sufficient for her to maintain herself, the petitioner shall certainly be entitled to claim alteration of maintenance under Section 127 Cr.P.C on the ground that she has ceased to be a woman unable to maintain herself. At the moment and with the available inputs, there is nothing to show that the claimant/mother has received adequate amounts by way of compensation which is sufficient for her to maintain herself.

9. The only other question is the quantum of maintenance payable. The 1st petitioner/husband of the claimant was found to be not having sufficient means.

The 2nd petitioner is an autorickshaw driver and the quantum of maintenance awarded is only Rs. 750/- per mensem. Even reckoning the fact that the shelter/roof is being provided by the 2nd petitioner/son for the claimant/his mother, I am satisfied that the quantum of maintenance awarded does not warrant interference.

10. The upshot of the above discussion is that the impugned order directing payment of maintenance under Section 125 Cr.P.C does not warrant interference by invoking the revisional jurisdiction of superintendence and correction.

11. This R.P.F.C is, in these circumstances, dismissed. I may hasten to observe that the dismissal of this revision petition will not in any way fetter the rights of the 2nd petitioner to claim alteration of maintenance under Section 127 Cr.P.C if there be change of circumstances later.

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