

Hamsa Vs. Abdul Jaleel

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Court : Kerala

Decided On : Feb-19-1999

Reported in : II(1999)DMC229

Judge : K.A. Mohamed Shafi, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125 and 127

Appeal No. : Crl. R.P. No. 728 of 1998

Appellant : Hamsa

Respondent : Abdul Jaleel

Advocate for Def. : T. Krishnan Unni, Adv. and; P.N. Sukumaran, P.P.

Advocate for Pet/Ap. : K.T. Sankaran, Adv.

Disposition : Petition dismissed

Judgement :

K.A. Mohamed Shafi, J.

1. The petitioner in both the revision petitions is the same person. Crl. R.P. No. 728/98 is directed against the order dated 27.11.1996 passed by the Judicial First Class Magistrate's Court, Pattambi in Crl. M.P. No. 2133/96 and M.C. No. 49/95. Crl. R.P. No. 729/98 is filed against the order dated 27.1.1996 passed in Crl. M.P.

No. 1471/96 and MC. No. 47/95 by the same Court.

2. The revision petitioner filed M.C. Nos. 46,47,48,49 and 53/95 before the Judicial First Class Magistrate's Court, Pattambi claiming maintenance at the rate of Rs. 500/- each from his five sons under Section 125 of Cr. P.C. Though M.C. 53/ 95 was filed at a later point of time, that M.C. was disposed of first by the lower Court by passing an ex parte order against the respondent therein on 18.1.1996 directing him to pay maintenance to the petitioner at the rate of Rs. 500/- per month. After the order in that M.C. was passed the respondent in the other M.Cs. filed petitions in the respective M.Cs. contending that those M.Cs. should be dismissed in view of the order passed in M.C. 53/95 granting maintenance to the petitioner at the rate of Rs. 500/- per month from another son. The lower Court considered those applications and passed separate orders allowing the CrI. M.Ps. and dismissing the M.Cs. finding that so long as the order in M.C. 53/95 is in force, the claim against the other sons is not maintainable. The revision petitioner has filed these revision petitions before this Court challenging the orders passed by the learned Magistrate dismissing the M.Cs. as not maintainable.

3. It is submitted by the Counsel for the revision petitioner that revision petitions are also filed against the orders passed in M.C. Nos. 46 and 48 of 1995 by the lower Court but they are not admitted since the petitions filed by the petitioner to condone the delay in filing those revision petitions are not disposed of since the service is incomplete in those petitions. -

4. In these revision petitions the petitioner has contended that under Section 125(1) of the Cr. P.C. there is no bar in claiming maintenance from each of the sons at the rate of Rs. 500/- per mensem. According to him, the provision only prevents claiming more than Rs. 500/- from each of the sons. According to him, it cannot be contended that all the children together are liable to pay only Rs. 500/- to the father since such an interpretation will be highly unreasonable and against the very object of Section 125 of the Cr.P.C. The Counsel for the petitioner submitted that the thrust in Section 125(1) of the Cr.P.C. in fixing the maximum limits is on the payment and not on receipt of maintenance under that Section. The Counsel for the petitioner' also submitted that even if the lower Court found that

the maximum amount that the petitioner is entitled to receive as maintenance under Section 125(1) of the Cr.P.C. is Rs. 500/-, the lower Court should not have dismissed the petitions filed by him against the other children, but should have closed the petitions, so long as the order passed against the other son for payment of maintenance is in force, with liberty to revive the petitions as and when found necessary, in view of Section 127 of the Cr.P.C. since Section 127 is not applicable to a person whose application under Section 125 is dismissed.

5. Section 125 of the Cr.P.C. is enacted in the place of Section 488 of the 1898 Code with certain amendments and additions. But the provisions of Section 488 of the old Code and Section 125 of the present Code are almost identical. The object of the enactment of those provisions is to avoid starvation, vagrancy and penury by providing maintenance to the needy and weaker sections in the society. Originally the upper limit of maintenance payable to an individual was fixed at Rs. 100 and subsequently the same is enhanced to Rs. 500/- by the amendment of the Criminal Procedure Code in the year 1956. As the matter now stands the Legislature in its wisdom has restricted the upper limit to Rs. 500/- to an individual and so far it has not thought of enactment enhancing that upper limit. From a careful reading of the provisions of Section 125(1) of the Cr.P.C. it is clear that the Legislature has fixed the upper limit of Rs. 500/- per mensem with regard to the taker and not the giver under that provision.

6. From the very scheme of Section 125(1) of the Cr.P.C. it is clear that a speedy summary remedy is provided to the person to save him from starvation and vagrancy. It is also well settled that the ultimate remedy available to a person with regard to maintenance is through the Civil Court in accordance with his or her personal law, and the order passed under Section 125 of the Cr.P.C. is subject to final adjudication of rights of the parties in Civil Court.

7. In the decision in *Inderjit Kaur v. Union of India*, (1990) 1 SCC 344, the Supreme Court has observed as follows:

'In this writ petition under Article 32 of the Constitution the validity of Section 125, Cr.P.C. has been challenged on the ground that the section unreasonably limits the maintenance to Rs. 500/- for individual. Section 125 provides a speedy remedy

against starvation of the civil liabilities of parties. The order made thereunder is tentative and it is subject to the final determination of the rights in Civil Court.

8. In the decision in *Prabhavati v. Sumatilal*, AIR 1954 Bom. 546 (FB) a Full Bench of the Bombay High Court has observed as follows:

'The intention of the Legislature was clear, and the intention was to cast an obligation upon a person who neglects or refuses to maintain his wife or children to carry out his obligation towards his wife or children. The obligation is separate and independent in relation to each one of the persons whom he is bound in law to maintain. It is futile to suggest that in using the expression in the whole' the Legislature was limiting the jurisdiction of the Magistrate to passing an order in respect of all the persons whom he is bound to maintain allowing them maintenance not exceeding a sum of one hundred rupees.....

(4).....Section 488 gives effect to the principle that a wife and a child has no independent right to be maintained by the husband or the father and, therefore, in making an order under Section 488 the Magistrate must award maintenance to each one of the parties appearing before him.'

9. In the decision in *Ramesh Chander v. Veena Kaushal*, AIR 1978 SC1807, by interpreting the clause 'not exceeding five hundred rupees in the whole' in Section 125 of the Cr.P.C. the Supreme Court has held that each claimant is entitled to the maximum amount of Rs. 500/- and observed as follows:

'In short, the decided cases have made a sociological approach to conclude that each claimant for maintenance, be he or she, wife, child, father or mother, is independently entitled to maintenance upto a maximum of Rs. 500/-. 13.....If a woman has dozen children and if the man neglects the whole lot and, in his addition to a fresh mistress, neglects even his parents and all these members of the family seek maintenance in one petition against the delinquent respondent, can it be that the Court cannot award more than Rs. 500/- for all of them together On the other hand if each filed a separate petition there would be a maximum of Rs. 500/- each awarded by the Court. We cannot, therefore, agree to this obvious jurisdictional inequity by reading a limitation of Rs. 500/- although

what the section plainly means is that the Court cannot grant more than Rs. 500/- for each one of the claimants. 'In the whole' in the context means taking all the items of maintenance together, not all the members of the family put together. To our mind, this interpretation accords with social justice and semantics and, more than all, is obvious.'

10. In the decision in Bahuleyan v. Karthiyani, 1978 KLT 73 this Court has observed that the parents can choose any one of the children or claim maintenance from all of them together. But the maximum amount of maintenance that can be awarded under Section 125 of the Cr. P.C. is Rs. 500/-. In that judgment the learned Single Judge of this Court has observed as follows:

'Section 125, Cr. P.C. fixes a ceiling on the quantum of maintenance to be sanctioned and the limit is fixed at Rs. 500/-. The section does not stipulate that all the children of the claimant should be made parties to the petition or that the claim should be made against all of them. It also does not say that the amount required for the maintenance of the claimant should be divided equally among the children and the person on record should be asked to pay only so much amount as would fall to his share. On the other hand, stress is made on the sufficiency of means of the person against whom the claim is made. In other words, the liability to maintain the claimant is dependent on the means of the person concerned. It may be that when the claim is made jointly against two or more persons, it is open to the Court to fix the liability of each of such persons in proportion to his means. But it is not incumbent on the Court to decide the liability of any of the persons taking into consideration that there are other persons who can also be proceeded against'.

11. The learned Single Judge has further observed as follows :

'Section 125, as already stated, does not say that the claimant should bring on record all the persons against whom he or she is entitled to claim maintenance. The liability being dependent on the means of the person concerned, the claimant may choose those persons who, according to him or her, are having sufficient means. The proceedings being of a summary nature, the Court also is not bound to enquire whether there are other persons against whom the liability to maintain is

cast under the personal law and is not bound to insist that such persons should be or brought on record so that the proportionate liability of each of such persons can be fixed. In fact a neglected parent who seeks maintenance against a particular son or daughter leaving out others would be taking a risk inasmuch as the maintenance that would be ordered would be dependent on the means of the person actually on record and the means of the other children would not be taken into account whereas if all the children are impleaded the parent concerned may get more, taking into account the sufficiency of means of all the persons concerned. If the person against whom maintenance is claimed feels that under the personal law of the parties or under the general law, others are also bound to share the responsibility, it is upto him to pursue his remedies if any, against such persons and claim contribution. Section 125 as such does not provide for such contingencies.'

12. I respectfully agree with the above observations made by the learned Single Judge. From the decisions noted above, it is clear that the clause 'not exceeding five hundred rupees in the whole' occurring in Section 125 of the Cr.P.C. and in Section 488 of the previous Code is interpreted by this Court as well as various High Courts and the Apex Court to mean that such individual claimant is entitled to the maximum amount of Rs. 500/- being maintenance under Section 125 of the Cr. P.C. Sections 488 of the Cr.P.C. 1898 provided only maintenance to neglected wives and children. By enacting Section 125 of the present Cr.P.C, 1973, the Legislature has made certain deviations and extended the benefit of the provision to father and mother also. Though in the wisdom of the Legislature those insertions are made in the present provision than the corresponding provision in the old Code, the Legislature did not deem it necessary to enhance the maximum limit of Rs. 500/- fixed in the year 1956. It is upto the Legislature to make necessary amendments to Section 125 of the Cr.P.C. to enhance the maximum limit taking into consideration of the present-day necessities of the life and this Court cannot sit in judgment regarding this aspect.

13. From the scheme of the provisions of Section 125 of the Cr.P.C. and the interpretation placed on the clause 'not exceeding five hundred rupees in the whole', in Section 125 of the Cr.P.C. by this Court as well as the Apex Court as

noted above, the contention of the petitioner that the provision limits the liability of the person who is directed to pay maintenance and not the person who is entitled to receive maintenance under Section 125 of the Cr.P.C. and the claimant can claim maintenance to the maximum of Rs. 500/- each from his sons or daughters as the case may be from whom maintenance is claimed, is absolutely unsustainable. The position is clear that the claimant is entitled to only the maximum amount of Rs. 500/- per mensem being maintenance under Section 125 of the Cr.P.C. and he can claim that amount from any one or more of his sons or daughters having means to pay maintenance without impleading the others in the proceedings. Therefore, in view of the fact that the maximum amount of Rs. 500 is awarded by way of maintenance under Section 125 of the Cr.P.C. in M.C. 53/95 in favour of the petitioner against one of his sons, he is not entitled to claim any maintenance from his other sons so long as the order passed against the son of the petitioner who is the respondent in the M.C. 53/95 continues to be in force.

14. It is contended by the petitioner that the lower Court awarded maintenance of Rs. 500/- to him against the respondent in M.C. 53/95 taking into consideration of the fact that he was employed in Gulf country and has not sufficient means to pay maintenance of Rs. 500 per month to the petitioner. But subsequently the respondent in M.C. 53/95 has filed a petition before the lower Court under Section 127 of the Cr.P.C. on 20.2.1997 to reduce the quantum of maintenance directed to be paid by him, by contending that he has returned from Gulf countries and has no means to pay the maintenance as awarded by the lower Court in M.C. 53/95. Therefore, the petitioner contended that he is entitled to claim maintenance from the other sons and, therefore, the lower Court is not justified in dismissing the petitions filed by him claiming maintenance from the other sons.

15. It has to be noted that under Section 125 of the Cr.P.C there is no bar against filing a subsequent petition claiming maintenance if a petition filed previously under that provision claiming maintenance is dismissed by the Court. Moreover, the liabilities of the parties to pay maintenance to the parents, wife and children are governed by their personal law. Therefore, in case the amount of maintenance awarded in favour of the petitioner in M.C. 53/95 is reduced in the petition filed by the respondent therein seeking reduction of the quantum under Section 127 of the

Cr.P.C. the petitioner will be entitled to claim maintenance from his other children, of course subject to the maximum limit of Rs. 500/- per mensem. The entitlement of the person against whom payment of maintenance is ordered from the other persons who are liable to pay maintenance to the petitioner under personal law or the general law, need not be considered in these revision petitions. Therefore, it is clear that the dismissal of the petitions filed by the petitioner against his other children in view of the order passed by the lower Court in M.C. 53/95 is perfectly justified. Hence the objections raised by the revision petitioner against the dismissal of M.Cs. 47 and 49/1995 in the above Cr. R.Ps. are not sustainable.

16. Taking note of the submission made by the Counsel for the revision petitioner that the dismissal of the M.Cs. filed against the other sons may cause prejudice to his claim for maintenance from them in future it is made clear that the dismissal of the M.Cs. by the lower Court will not prejudice or affect the right of the petitioner to claim maintenance from his other sons in case he is entitled to claim the same from them under Section 125 of the Cr.P.C.

With the above observations, both the Crl. R.Ps. are dismissed.

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