

Kamatchi and Another Vs. Veluchamy

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Court : Chennai

Decided On : Feb-26-1996

Reported in : 1997CriLJ418; II(1996)DMC286

Judge : M. Karpagavinayagam

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125, 125(1), 125(2), 126, 127, 128 and 129

Appeal No. : Cri.R.C. No. 603 of 1991 and Cri.R.P. No. 601 of 1991

Appellant : Kamatchi and Another

Respondent : Veluchamy

Advocate for Def. : P. Radhakrishnan, Adv.

Advocate for Pet/Ap. : M. Sathya Narayanan, Adv.

Judgement :

ORDER

1. The 1st Petitioner/wife Smt. Kamatchi filed a petition for maintenance against her husband in M.C. No. 247/77 on the file of the Judl. Magistrate No. 1, Ramanathapuram, claiming maintenance for herself and for her two children claiming Rs. 200/- p.m. for herself and Rs. 50/- p.m. each for her children.

2. On 28-2-1978, after an elaborate enquiry, the learned Magistrate passed an order, granting maintenance of Rs. 30/- p.m. to the wife, to a sum of Rs. 70/- p.m. After a lapse of 8 years, since the petitioner/wife felt that the maintenance awarded in the year 1978 was not sufficient to meet the expenditure, she filed another petition on 17-11-86 in Crl.M.P. No. 6770-A/86 on the file of the Judicial Magistrate No. I, Ramanathapuram, claiming for enhancement of maintenance to Rs. 250/- p.m. for herself and Rs. 200/- for her son and since the daughter got married, the petitioner did not claim any maintenance for the daughter. On this petition, the respondent/husband was summoned and opportunity was given by the lower Court for production of materials to prove their respective contentions. Ultimately on 9-4-91 i.e., after 5 years, the learned Magistrate passed an order enhancing the maintenance to Rs. 200/- for the petitioner/wife and Rs. 150/- for her son after elaborate consideration of the materials placed by the respective parties. While passing that order the learned Magistrate has specifically observed that the amount of award of maintenance as ordered should be payable from the date of petition viz., 17-11-86. Aggrieved by that order, the respondent/husband on 26-4-91, preferred a revision in Crl.R.P. No. 13/91 on the file of the Principal Sessions Judge, Ramanathapuram. The learned Sessions Judge, after consideration of the submission of either parties passed an order on 26-8-1991 modifying the order passed by the learned Magistrate to the effect that the maintenance can be payable from the date of the order of the trial Court and not from the date of application as ordered by the Magistrate and also the amount of maintenance was modified as Rs. 150/- p.m. to the wife and Rs. 100/- p.m. to the son. Aggrieved by this order, the petitioners/wife and son have filed this revision.

3. I have heard Mr. M. Sathyanarayanan, learned Counsel for the petitioners and Mr. P. Radhakrishnan, learned counsel for the respondent. This revision has to be allowed on a simple ground which is detailed below.

4. The main contention urged by learned counsel for the petitioner is that the Sessions Court ought not to have modified the order passed by the Magistrate, to the effect that the maintenance is payable from the date of the application, instead of from the date of the order, for the more reason that the aggregate sum of money, if calculated from the date of the application would be much more than the

sum calculated from the date of the order.

5. At the outset, I must mention that the reason given by the learned Sessions Judge for the alteration of the order of Magistrate seems to be preposterous. The observation by the Sessions Judge, giving reason for the above said modification is as follows :-

This reason is not on the basis of any material placed before the Court. Then mercy or the sympathy shown by the Sessions Court must have been on the basis of the reason which has to be validly accepted and the same must be in accordance with law. At this stage, learned have elaborately considered the scope under Sec. 127, Cr.P.C. in which it is insisted that the order to be passed by the Courts below must answer the question whether the maintenance is to be ordered from the date of the application or from the date of the order with valid reason. Sec. 125(2), Cr.P.C. provides that such allowance shall be payable from the date of the order, or, if as ordered, from the date of application for maintenance. So, under this Section, a discretionary power has been given to the Magistrate, either to award the maintenance from the date of the application or from the date of the order, in the light of the circumstance a found in the particular case. Of course, Sec. 127, Cr.P.C., does not contain such a provision, however, it makes hardly any difference in view of the fact that the procedure contemplated under Sec. 127, Cr.P.C. is only a continuous process as mentioned in Sec. 125, Cr.P.C. So, the non-mentioning of this provision as contained in Sec. 125(2) and Sec. 127, Cr.P.C., does not disentitle the Magistrate from making any order to award maintenance either from the date of the application or from the date of the order. So, a conjoint reading of Sections 125(2) and 127, Cr.P.C., would make it clear that the Magistrate is well within the powers to order maintenance from the date of the application. As such, I do not find any illegality in the order passed by the Magistrate on 9-4-91 observing that the award of maintenance must be payable from the date of application, i.e. from 17-11-1986. It is very unfortunate that the learned District and Sessions Judge who heard the revision preferred by the husband did not give any reason to justify for the finding that the award of maintenance is payable from the date of order. Instead such a finding of the Sessions Court is as a result of conjunctures and surmises on the basis of the

reasoning that the total amount of maintenance from the date of application would be much more than the one calculated from the date of the order. These reasons and the observations are not acceptable at all, since the same reflects the lack of judicial application of mind. Learned counsel for the petitioner has brought to my notice the following two decisions, to show that Magistrate is well within his powers to order enhancement of maintenance from the date of application under Section 127, Cr.P.C.

(1) Raj Kumari v. Dev Raj Vij, : 1984(7)DRJ323 and (2) Manmoth Mohan Nath v. Purnamasi Devi, 2(1986) DMC 305.

6. The learned Sessions Judge, in his judgment has referred to the judgment of Mysore High Court, reported in : AIR1958 Kant190 (Dr. T. K. Thayumanavar v. Asanambal Ammal), to show that only under some circumstances, the order could be passed awarding maintenance from the date of the application under Sec. 125 or 127, Cr.P.C. Learned counsel for the petitioner elaborately argued stating that the interpretation of Secs. 125 and 127, Cr.P.C. should be made by taking into consideration of the scope and object of the sections and as such the law laid down in Mysore Court in the year 1958 cited supra would not be a correct law in view of the elaborate discussion on the scope of Sections 125 and 127 as found in the decision reported in cited supra, wherein it is held as following (Paras 7 and 9) :

'7. The next question to be determined is whether the enhancement of compensation could have been allowed from the date when the petition for enhancement was moved, or should have necessarily been deferred to the date of the order of the Court. There has been a conflict of decisions of different High Courts in this regard. A perusal of Section 125, Criminal Procedure Code shows that the Court may upon proof of neglect or refusal to maintain, order the defaulting person to make a monthly allowance at such rate not exceeding Rs. 500/- in the whole as may be thought fit and to pay the same as the Court may 'from time to time' direct. Thus these provisions postulate the availability of power with the Court to require the payment of maintenance as may be directed from time to time. The significance on time factor cannot be treated as without purpose.

In fact the same is pointer to variations, inherent in different situations, and the Magistrate taking note/of them. Thus independent of Section 127 which specifically makes provisions for alteration in maintenance allowance, the basis thereof is laid in Section 125 itself and recognised there What Section 127 elaborates is the nature of proof that the Magistrate may require. The same is the change in circumstances. Here again the upper limit of Rs. 500/- in the whole is maintained. This section is thus supplemental to Section 125, and even has been treated as proviso by the Mysore and Punjab and Haryana High Courts in the decision reported as Dr. T. K. Thayumanavar v. Asanambal Ammal, : AIR1958 Kant190 and Bhagat Singh v. Smt. Prakash Kaur . In both these decisions the power of Magistrate to direct that the increased rate of maintenance be paid from the date of the application asking for the increase was upheld. It was, of course, observed that ordinarily an order of this type should be effective only from the date of the order, and that before the same was given retrospective effect, there must be special circumstances. The mere fact that there was some delay in the enquiry of the case, it was observed, would not be a sufficient ground to direct the payment of increased rate maintenance from the date of the application.

8.

9. A social legislation for unprivileged who are neglected and foresaken, and who have no income of their own to support has to be liberally and beneficially construed. The effort should be to ensure that the purport of the legislation in real sense flows to them, and what is due to them is not denied, delayed or defected by technicalities, designs or motivation of the opposite side to thwart long as possible, or the unfortunate delays which have come to stay in our system of administration of justice. In the present case the petition for enhancement though moved in August, 1977, could not bear result till August, 1983. Thus a period of 6 years was allowed to lapse. The course of conduct of the petitioner shows that she had been all through clamouring for higher maintenance. There is no reason why she should suffer in the very minimum maintenance payable for her living and upkeep for no fault of her own. To hold it otherwise, would be to provide a handle to any uncanny litigant to delay the proceedings as far as possible, and thus take advantage of his own wrong or bank upon the judicial delays. It would also stand

in the way of consent orders. The proper approach to interpret Section 127 is to treat it as incidental provision to the main Section 125, and what is provided for in Section 125 is not taken away, unless specifically enjoined. I am therefore, of the considered opinion that the petitioner is entitled to enhancement of maintenance from the date of the application in terms of what is stated in para 6 above.'

7. In the decision reported in *Manmoth Mohan Nath v. Purnamasi Devi*, 2 (1986) DMC 305 the Gauhati High Court held as follows (Paras 3 and 4) :

'3. In *Dr. T. K. Thayumanavar v. Asanambal*, : AIR1958 Kant190 , it was held that the appropriate way to consider Section 489, Cr.P.C. was to read the same as proviso to Section 488(1), Cr.P.C. So read the other part of Section 488 would become applicable to the proceedings under Section 489. Accordingly it was held that a Magistrate had power to direct that the increased rate of maintenance ordered by him be paid from the date of the application asking for the increase. However, a note of caution was added that ordinarily an order of this type should be effective only from the date of the order; in order to give retrospective effect to it there must be special circumstances, and that the mere fact that there was some delay in the enquiry of the case was not a sufficient ground to direct the petitioner to pay maintenance at the increased rate from the date of the application. In *Parameswara Moothar v. Balameenakshi*, : AIR1969 Ker108 the Calcutta view was dissented from. It was observed that under Section 489, an enhancement of the maintenance allowance could be made to take effect from the date of the application for enhancement instead of from the date of the order. Section 489 was only consequent on Section 488. Therefore, even if elaborate provisions were not made under that section on the same lines as under Section 488, it could not be said that a Court acting under Section 489 had not all the powers it had under Section 488. The result was that if the Magistrate had power under Section 488 to award maintenance from the date of the application, he must have had the same power to award increased allowance also from the date of the application for enhancement. But there was a distinction between an order reducing the maintenance allowance and an order increasing the allowance. In the former case, the principle that amounts already accrued could not be retrospectively varied had to be applied. In the other case i.e., of an enhancement of the allowance, there

was no scope for application of that principle. The Magistrate was free to enhance the allowance either from the date of the application for enhancement or from the date of the order. This view was also followed in *Bhagat Singh v. Smt. Parkash Kaur*, where the contention that Section 489, Cr.P.C. (Old) did not permit an increase in the monthly allowance to take effect from the date when it is asked for and that it could be awarded only prospectively, was rejected observing that the weight of authority was against the view expressed by Blank, J. In : AIR1958 Kant190 , K. S. Hegde, J. held that Section 489 had no independent existence and must be considered as a part and read on a proviso to Section 488(1) so that sub-section (2) of Section 488 would apply as much to an order passed under sub-section (1) thereof as to an order passed under Section 489. This was also the view taken in AIR 1969 Ker correct view and that the learned Magistrate had the jurisdiction to make the enhancement in the maintenance allowance effective from the date when it was asked for. In *Smt. Raj Kumari v. Dev Raj*, where the petition for enhancement of maintenance was not disposed of for about 6 years due to judicial delays it was held that the wife was entitled to enhancement from the date of application. The reason is obvious. The time taken in disposing of the petition should not deprive the wife of the enhancement she applied for it otherwise she was entitled.

4. There is no dispute that Sections 125 to 128 of Chapter IX of the new Cr.P.C. cover the same field which was covered by Sections 488 to 490 of Chapter XXXVI of the old Cr.P.C. and that Section 127 stands in the same relationship to Section 125(1) and as old Section 489 stood in relation to old Section 488(1), sub-sections (3) and (4) of the new Section 127 are now consequential on the amendments made in Section 125, Sections 125 to 129 constitute one family having been grouped together in Chapter IX of the new Code of 1973 under the caption 'order for maintenance of wives, children and parents.' This chapter provides a mode of preventing vagrancy, or at least of preventing its consequences. They are intended to fulfil a social purpose by compelling a man to perform the moral obligation which he owes to society in respect of his wife and children. By providing a simple, speedy but limited relief, they seek to ensure that the neglected wife and children are not left beggared and destituted on the scrap-heap of society and thereby driven to a life of vagrancy, immorality and crime for their

subsistence. As was observed in *Bhagwan Dutt v. Kamala Devi*, : 1975 CriLJ40 , the Court has to 'find out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family.' As was observed in *Bhupinder Singh v. Daljit Kaur*, : 1979 CriLJ198 , Section 125 is a provision to protect the weaker of the two parties, namely, the neglected wife. Section 127 is to be read as proviso to Section 125(1).'

8. Therefore, the above decisions clearly would reveal that enhancement of maintenance under Section 127, Cr.P.C. can be ordered to be payable from the date of application and its provisions have to be treated as incidental provisions to the main Section 125 and what is provided under Section 125 is not taken away. Moreover, the social legislation as contemplated under Sections 125 and 127 for the unprivileged, neglected persons and these who are not having income of their own to support themselves, has to be liberally and beneficially construed. So, in the light of these decisions, I am of the view that the order passed by the Sessions Court directing the respondent to pay only from the date of the order is not valid in law and the same is liable to be set aside. So, I direct the respondent to pay the maintenance from the date of the application viz. 17-11-1986. However, the learned Sessions Court has considered the materials produced by the respondent/husband with regard to the income and came to the conclusion that the amount of maintenance could be reduced from Rs. 200 to Rs. 150/- for the wife and from Rs. 150/- to Rs. 100/- to her son. I am of the view that this reduction of the amount is reasonable. As such that portion of the judgment of the Sessions Court is confirmed.

9. In the result, the Respondent is directed to pay the maintenance of Rs. 150/- p.m. to the wife and Rs. 100/- p.m. to her son from the date of the application viz., 17-11-1986, this order of confirmation with regard to the quantum of the maintenance is passed on the undertaking given by learned counsel for the respondent that the arrears from the date of the application upto date will be paid within four months time from today. With this observation, the revision is allowed in part.

10. Revision partly allowed.

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