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Padmanabhan Vs. Bama

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Court : Chennai

Decided On : Feb-03-1987

Reported in : 1988CriLJ1386

Judge : Maheswaran, J.

Appellant : Padmanabhan

Respondent : Bama

Judgement :
ORDER

Maheswaran, J.

1. This revision is directed against the order in M.P. No. 531 of 1985 in M.P. 110 of 1985 in M.C. 500 of 1978, on the file of the Second Metropolitan Magistrate, Egmore, Madras.

2. The revision petitioner is one Padmanabhan. The respondent, Bama is his wife. Bama, the respondent, filed an application under Section 125 cr.P.C. claiming maintenance. Parties and their respective counsel made a joint endorsement fixing the maintenance at Rs. 150 per month. But the respondent filed a petition in M.P. 531 of 1985 under Section 127 cr.P.C. claiming enhanced maintenance as she finds herself unable to maintain with the sum of Rs. 150 per month. She prayed for a sum of Rs. 400 per month.

3. The revision petitioner filed an application contending inter alia that the petition under Section 127 cr.P.C. by the wife is not maintainable. The contention taken by the petitioner is that the endorsement on the petition for maintenance under Section 125 cr.P.C. was made by both the husband and the wife 'without prejudice to their contentions' and therefore the petition for enhancement of the maintenance under Section 127 cr.P.C. is not maintainable in the absence of a finding that the husband, though having means, has neglected or refused to maintain and that the wife has no means to maintain herself. His further contention is that the Second Metropolitan Magistrate, Egmore, Madras, has no jurisdiction to entertain the petition as the parties are living at Mambalam and Kodambakkam and the Magistrate at Saidapet alone has jurisdiction to try the petition (This point is taken only in the additional counter in cr.M.P. 110 of 1985 and not in M.P. 531 of 1985).

4. The learned Magistrate found that the petition in M.P. No. 110 of 1985 filed under Section 127 cr.P.C. is perfectly maintainable and dismissed the petition filed in M.P. No. 531 of 1985. The revision petitioner is aggrieved and has filed this revision.

5. Mangayamma v. Appalaswami AIR 1931 Mad 185 : 1931 Cri LJ 688 is an authority for the proposition that if the compromise of which the essential part is passing of an order under Section 488 cr.P.C. (old Code) such an order can be enforced under Section 488 cr.P.C. (old Code), but if the compromise is independent of the Court the court would be under no necessity to pass an order under Section 488 cr.P.C. (old Code). It was pointed out by the learned Judge in that case that the husband was prepared to consent to judgment without giving the petitioner any further trouble so long as her claim for maintenance was reasonable and therefore the Magistrate passed orders in terms of that agreement or compromise, a very sensible arrangement which will not in any way detract from the force of the order. It must at once be pointed out that in this case the compromise was made through Court.

6. The next case is Hashim Hussain v. Smt. Rukaiya Bano . That was a case where an application was filed by one Rukaiya Bano under Section 125 cr.P.C. claiming maintenance from her husband, Hashim Hussaih. The matter was

compromised. The compromise contained five clauses and one of the clauses was that in the event of the failure of the husband in implementing the terms of the compromise, he will pay a monthly allowance of Rs. 200 for the maintenance of Rukaiya Bano. The trial Magistrate passed an order which is to the effect that the parties appear and file a compromise and that the application for maintenance is decided in terms of the compromise. The Court took the view that the order passed by the Magistrate is a valid order passed in accordance with law under Section 125, cr.P.C. The learned Judge of the Allahabad High Court pointed out that Section 125 cr.P.C. does not prescribe any particular form in which the final order of the Magistrate should be passed in granting maintenance allowance to the wife and that the only restriction placed is that the maintenance allowance should not exceed a sum of Rs. 500.

7. Sivarajan v. Meenakshi ILR (1966) Ker 165 was a case where the wife and the children filed an application under Section 488 cr.P.C. (old Code) for maintenance claiming maintenance of Rs. 60 per month. During the hearing, the husband offered to pay maintenance at Rs. 30 per month, and the figure was accepted by the wife. The learned Magistrate then passed an order fixing the maintenance at Rs. 30 per month. About 3-1/2 years later, a petition was filed by the wife, and children for enhancement of the maintenance amount. The learned Magistrate enhanced the rate at Rs. 50 per month. It was urged before the learned single Judge by the counsel for the husband that the original order having been passed as a result of the compromise, the learned Magistrate has no jurisdiction to enhance the amount, the proper forum to grant such relief being the Civil Court. The learned Judge of the Kerala High Court took the view that a mere offer and acceptance regarding the rate of maintenance will not oust the jurisdiction of the Court to act under Section 488 cr.P.C. (old Code), that an order based on such compromise will still be an order under Section 488 cr.P.C. (old Code) and the Court is competent to make such alteration in the allowance as provided for in Section 489 cr.P.C. (old Code).

8. To the same effect is the ruling in Balakram v. State . That was a case where the parties, the husband and the wife, entered into a compromise that the wife shall be paid an allowance of Rs. 19 and the amount will not be increased or

decreased in future. But the wife filed application for enhancement under Section 489 cr.P.C. (old Code). That was rejected by the Magistrate. Another petition was filed for the same relief and that was also rejected. In a third application also she prayed for the same relief. It was contended that the earlier order rejecting enhancement has become final and that the petition is not maintainable in law. Rejecting this argument, the learned single Judge of the Allahabad High Court pointed out that, the compromise filed in the case merged into the order of the Court and it is the Court's order which is sought to be modified by the application under Section 489(1) cr.P.C. and there is nothing in Section 488(1) cr.P.C. which takes away the jurisdiction of the Court to modify its own order even though it may have been passed on the basis of a compromise. It should be noted that in that case the parties agreed that the amount of Rs. 19 will not be increased or decreased in future. Notwithstanding such an agreement, the court held that if there has been a change in circumstances of any person receiving or paying a monthly allowance under Section 488 cr.P.C it is always open to the court to alter the allowance under Section 489(1) cr.PC.

9. In Vasudevan Nair v. Kalyani Amma Gouri Amma, , the Kerala High Court held that the terms as to maintenance are independent of other terms of the compromise and the criminal Court can found its order as to maintenance on a compromise and enforce it, that if the Court passes an order in terms of the compromise, then it is that order and not the compromise that is sought to be enforced subsequently. To the same effect is the decision in Punn Deb v. Bishnuli, : AIR1950 All454 . It is manifest from the rulings referred to that the Court has jurisdiction to enforce its own order under Section 488 cr.P.C. even though it is passed on the basis of a compromise.

10. But what is now contended by the counsel for the revision petitioner is that the compromise entered into between the parties is without prejudice to the contentions of the parties' and that makes all the difference and that would amount to saying that the petition under Section 125 cr.P.C. claiming maintenance would still be pending in law and not finally decided on merits (ground (d) of the memorandum of grounds of revision). He invited my attention to Umesh Jha v. State AIR 1956 Pat 425, where a Division Bench of Patna High Court on a money

transaction interpreted the words 'without prejudice'. They stated that the words without prejudice' import into any transaction that the parties have agreed as between themselves the receipt of money by one and payment by the other shall not of themselves have any legal effect on the rights of the parties and they shall be open to settlement by legal controversy as if the money has not been paid. But, it is not clear to understand as to what exactly the parties meant by saying 'without prejudice to their contentions' when they made the endorsement. It is clear from the endorsement that the husband has not questioned the liability to maintain his wife by paying a monthly maintenance of Rs. 150 while the wife on her part agreed to receive the maintenance amount of Rs. 150. It is on that compromise, the learned Magistrate passed the following order 'Petitioner present. Petition allowed in terms of joint endorsement'. The compromise itself runs thus:

Without prejudice to the contentions of both the parties and with a view to amicable settlement, by consent maintenance at Rs. 150 (Rs. one hundred and fifty only) per month is fixed and is payable from 1st July 1978, and the first instalment is payable on or before 15th Aug. 1978 and subsequently on or before the 15st of the succeeding month. Default will entail execution through court. The respondent will send the maintenance amount directly to the petitioner. Dated 1st July 1978.

One of the conditions in the compromise is that default will entail execution through court In the face of this condition it is difficult to understand the contention of the learned Counsel for the petitioner that the petition under Section 125 cr.P.C. must be deemed to be still pending. Learned Counsel for the respondent also produced before me what is termed as the maintenance order' passed by the Second Metropolitan Magistrate, Madras. It states thus:

'Maintenance Order Government of Madras In the II Metropolitan Magistrate's Court, Egmore, Madras Application No.M.C. 500 of 1978.

Before Thiru v. Natarajan, M.A.B.L. M.C. 500 of 1978

Whereas it has been duly proved that one Padmanabhan having sufficient means neglects to maintain one Bama his wife and legitimate children respectively, who is

unable to maintain herself.

It is hereby ordered under the provisions of Section 488 of Act V of 1898, that the said Padmanabhan do pay unto Bama a monthly allowance of Rs. 150/- (Rs. one hundred and fifty only) for the maintenance of herself with effect from 1-7-1979 children as aforesaid dated Madras, the 1st day of July 1978

Seal Sd....

II Metropolitan Magistrate.

The revision petitioner's counsel contended that this is a printed form to collect maintenance amount by warrant if the maintenance is not paid and that the contents of this printed document will not amount to an order passed by the learned Magistrate. But, I earlier pointed out that this document shows that it is a maintenance order. He then contended that the Magistrate had no materials before him to show that the revision petitioner has sufficient means and that he neglected to maintain the respondent, his wife. But then that is a plea which he cannot take now, as the order passed under Section 125 cr.P.C. has become final. The question is if there is an order under Section 125 cr.P.C. could not the wife file an application under Section 127 cr.P.C. to enhance the maintenance granted. As pointed out earlier, there is nothing in Section 127 cr.P.C. which takes away the jurisdiction of the Court to modify its own order even though it is passed on the basis of a compromise. The words 'without prejudice to the contentions of the parties' will not alter, the situation. If there has been a change, in the circumstances of any person receiving or paying a monthly allowance under Section 125 cr.P.C. it is always open to the Court to alter the amount under Section 127 cr.P.C. That means, this section would apply both to the husband and to the wife, As it has been held that the Magistrate has jurisdiction to enforce the order passed under Section 125 cr.P.C, he would have jurisdiction to entertain an application under Section 127, cr.P.C. and deal with it in accordance with law. It is within the competence of the Magistrate to accept a compromise made by the parties and to pass an order under Section 125, cr.P.C. giving effect to the terms agreed between parties as to the rate of maintenance. In Punn Deb v. Bishnuli : AIR1950 All454 , to which reference was made already, the learned Judge pointed

out that after a compromise has been arrived at, the court has still to pass an order and if it passes an order in terms of the compromise, it is that order and not the compromise that will be enforced subsequently. Therefore, the petition under Section 127 cr.P.C. is perfectly maintainable. The order of the Magistrate is correct.

11. One other contention is that the Second Metropolitan Magistrate Egmore, Madras, has no jurisdiction to entertain this application and that the application ought to have been filed before the Magistrate at Saidapet. But the learned Second Metropolitan Magistrate found that the Court at Egmore has jurisdiction. He found that M.C. 500 of 1978 was filed when the wife was at Nungambakkam, within the jurisdiction of the Court at Egmore. Under Section 126 cr.P.C. proceedings under Section 125 cr.P.C. can be taken against any person where he is or where he or his wife resides or where he last resided with his wife or, as the case may be, with the mother of the illegitimate child. Jurisdiction has to be decided with reference to the place where the parties resided at the time of filing of the petition under Section 125(1) cr.P.C. It is therefore manifest that the court at Egmore has jurisdiction to try the petition, the revision is dismissed

An oral application for leave to appeal to Supreme Court is sought. The question that was argued was whether the Court will have jurisdiction under Section 127 cr.P.C. to enhance the maintenance, when the order under Section 125 cr.P.C. is passed on the basis of a compromise. That has been covered by judgments of various Courts and I have held that there is nothing in Section 127 cr.P.C. which takes away the jurisdiction of the Court to modify its own order even though it was passed on the basis of a compromise. Therefore, this is not a fit case for granting leave to appeal to Supreme Court. Leave refused.

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