

Mailappa Chettiar Vs. Sivagami Achi

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Court : Chennai

Decided On : Apr-05-1963

Reported in : 1964CriLJ242

Judge : Sadasivam, J.

Appellant : Mailappa Chettiar

Respondent : Sivagami Achi

Judgement :

ORDER

Sadasivam, J.

1. Petitioner Mailappa Chettiar seeks to revise' the order of the District Magistrate, Ramanathapuram, dismissing his petition to cancel the order for maintenance made against him in M. C. No. 38 of 1959 on hit file in so far as it relates to the respondent' The respondent got maintenance for herself and her daughter lit M. C. No. 38 of 1959 on the file of the District Magistrate on the ground that the petitioner neglected and refused to maintain her. In the said proceedings, she also proved that she was treated cruelly. Subsequently, the petitioner filed O. P. No. 4 of 1960 on the file of the Sub Court, Sivaganga, Under Section 13 of the Hindu Marriage Act to dissolve his marriage with the respondent. The Subordinate Judge did not grant a decree for divorce but granted a decree for judicial separation on the ground that the respondent deserted the petitioner for a period of not less than

two years prior to the petition. Thereupon, the petitioner filed the present petition, before the District Magistrate Under Section 488(4) and 489(2) CrI. P. C. to cancel the order in M. C. Ho, 38 of 1959 on the file of the District Magistrate, and he has filed the present revision petition against the dismissal of the said petition.

2. In M. C. No. 38 of 1959 on the file of the District Magistrate, the criminal Court found that the petitioner ill-treated and also neglected and refused to maintain the respondent. In the order for judicial separation granted by the Sub Court, a totally inconsistent finding of desertion by the respondent has been given on the ground that the respondent had failed to prove that she was ill-treated by the petitioner. The question for consideration in this petition is whether by reason of the inconsistent finding given by the Civil Court the order for maintenance should be cancelled.

3. The learned advocate for the petitioner relied on the decision in *Mrs. Grisilda Titus v. Mr. Louis Titus* 1947 Mild WN 604 : AIR 1947 Mad 425 in support of his case) It was held in that case that on an application filed Under Section 489(2) CrI. P. C. it is the duty of the court to consider whether a decision of the Civil court leads to the consequences that the order passed by the criminal Court Under Section 488 should be cancelled or varied. It is clear from the facts of that case that the criminal Court cancelled the order for maintenance on the ground that the wife lived in adultery, and when subsequently her husband's petition for divorce on the ground of adultery was dismissed, it was held that the decision : of the Civil Court that there was no adultery should be given effect to by the criminal Court by varying or cancelling the incorrect order originally passed. by it. But, in the present case, the original order for maintenance was passed on the ground of neglect or refusal to maintain the respondent by the petitioner and that was not altered or varied by any decision of a competent Civil Court. The Civil Court gave a decree for judicial separation and the effect of the decision is not to cancel any order for maintenance. Even a Court granting a decree for judicial separation can award maintenance.

It is true that no such award of maintenance was made in this case, as the respondent had already obtained an order for maintenance Under Section 488 CrI.

P. C. The Civil Court did not purport to cancel the order for maintenance by its decision and it is not implicit in that order also. If really the petitioner ill-treated or neglected or refused to maintain the respondent as found by the criminal Court, there could not be a correct finding of desertion by the respondent as found by the Civil Court, the mere fact that the Civil Court has given an inconsistent finding is by itself not sufficient ground to cancel the order for maintenance made by the criminal Court, (it is no doubt open to the petitioner to have in-,, dependency proved that he was willing to take the respondent and that the order for maintenance should be cancelled on account of the continued wrongful refusal by the respondent. But that is not the plea in this case. It is brought to my notice that the petitioner has obtained a decree for divorce a few days back. It is open to the petitioner to apply to the lower Court that there is no longer any relationship of husband and wife between him and the respondent and get suitable orders. But, so far as the present petition is concerned, there is no ground to revise the order of the District Magistrate refusing to cancel the maintenance order in M. C. No. 38 of 1959 on the file of the District Magistrate.

4. The criminal revision petition is dismissed.

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