

Sampathkumar Vs. Padmavathy and 2 ors.

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Court : Chennai

Decided On : Feb-12-1996

Reported in : I(1997)DMC371

Judge : M. Karpagavinayagam, J.

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

Appeal No. : Crl. R.C. No. 157 of 1993

Appellant : Sampathkumar

Respondent : Padmavathy and 2 ors.

Advocate for Def. : D. Sivakumar, Adv.

Advocate for Pet/Ap. : S. Uthirasamy, Adv.

Disposition : Petition allowed

Judgement :

M. Karpagavinayagam, J.

1. This revision has been preferred by the petitioner (husband) against the ex parte order of maintenance ordered in favour of respondents (wife and children) at the rate of Rs. 1,200/- p.m. for all the respondents in M.C. No. 5 of 1991 on the file of Judicial Magistrate V, Salem.

2. Originally, first respondent/wife filed a petition under Section 125 Cri.P.C., before the said Magistrate for herself and on behalf of her two children, claiming a total maintenance of Rs. 1,200/- p.m. This petition, though it was dated 15.3.1993, was taken on file of 5.4.1993 by the Magistrate. On receipt of summons, petitioner entered appearance and filed his counter.

3. On 14.2.1992, first respondent was examined as P.W.I and she was cross-examined by the petitioner. Subsequently, first respondent has closed her evidence and the matter was posted for examination of the petitioner. Since, on that appointed day, the petitioner did not appear before the Court, on the basis of the evidence available, learned Magistrate passed an ex parte order, granting maintenance as afore stated. Against this ex parte order, petitioner has filed this revision.

4. Since there was delay in filing the revision, petitioner filed an application for condoning the delay. After notice in the application for condoning the delay, this Court ordered directing the petitioner to pay a sum of Rs. 16,000/- to the first respondent towards arrears of maintenance and on receipt of such amount by the first respondent's Counsel, this Court directed the office to number the revision.

5. Learned Counsel for the petitioner, Mr. Uthiraswamy, submits that he had no intention to avoid enquiry and that was the reason why he appeared on all the earlier hearings before the Magistrate and filed his counter. In fact, petitioner was present when P.W.I was examined and she was also cross-examined. On 28.4.1992, due to sudden illness he was not able to attend the Court and also did not inform his Counsel and that is why the ex parte order came to be passed. Learned Counsel submits that he must be given an opportunity to participate in the enquiry in order to prove his case that the respondents are not entitled to maintenance. However, he has agreed to pay a portion of the arrears of maintenance.

6. On the above aspect, I have heard the learned Counsel for the respondents. He fairly submits that he is agreeable for such a course, provided the petitioner pays 1/3rd of the arrears of maintenance. Ex parte order was passed by the learned Magistrate on 28.4.1992, ordering maintenance to be paid from the date of

petition. Till now, the total amount accrued is approximately Rs. 69,000/-. Petitioner has already paid a sum of Rs. 10,000/- as ordered by this Court. In the interest of justice, petitioner is directed to deposit another sum of Rs. 15,000/- within four weeks from to-day, to the credit of the above M.C. in lower Court and on such deposit, respondents are entitled to withdraw the amount. In this view, the impugned ex parte order shall stand set aside on deposit of another sum of Rs. 15,000/- within the time stipulated above, failing which this revision shall stand dismissed. On such deposit, learned Magistrate is directed to conduct the enquiry from the stage of taking evidence on the petitioner's side and then dispose of the case as expeditiously as possible. Subject to the above terms, this revision is allowed.

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