

Amarendra Kumar Pal Vs. Maya Pal

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Court : Kolkata

Decided On : Mar-12-2004

Reported in : 2004(3)CHN86

Judge : Arunabha Barua, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125 and 482

Appeal No. : C.R.R. No. 1852 of 1997

Appellant : Amarendra Kumar Pal

Respondent : Maya Pal

Advocate for Def. : Washef Ali Mohan, Adv.

Advocate for Pet/Ap. : Bikash Kumar Mukherjee, Adv.

Disposition : Revision application dismissed

Judgement :

Arunabha Barua, J.

1. This is an application under Section 401 read with Section 482 of the Code of Criminal Procedure whereby the petitioner-husband, Amarendra Kumar Pal is up against his wife Smt. Maya Pal, being aggrieved by judgment and order dated 18.2.97 passed in Criminal Motion No. 285 of 1994 by the learned Additional

Sessions Judge, Murshidabad at Berhampur.

2, By that order dated 18.2.97 the learned Additional Sessions Judge had dismissed a criminal motion made by the husband and affirmed an order dated 13.7.94 passed in Misc. Case No. 6 of 1993 by the Chief Judicial Magistrate, Murshidabad, which directed the petitioner-husband to pay a monthly maintenance allowance of Rs. 450/- to each of the three children with effect from February, 1993. This order of the learned Chief Judicial Magistrate was dated 13.7.94 though the learned Magistrate ordered payment of maintenance from a date prior to that is from February, 1993.

3. The revisional applicant-husband in the instant revisional application is aggrieved and dissatisfied with the said impugned order of the learned Additional Sessions Judge, Murshidabad, affirming the judgment and order dated July 13, 1994 passed by the Chief Judicial Magistrate, Murshidabad for the following reasons ;

(a) That the order of the learned Chief Judicial Magistrate was ex parte and he was denied of an opportunity of hearing.

(b) That the learned Magistrate was not justified in holding that he was wilfully avoiding service of summons or that he wilfully neglect to attend the Court at the date of hearing.

(c) That the determination of the quantum of enhancement of allowance to the tune of Rs. 450/- per month for each of the three children was excessive and bad in law.

(d) That the learned Magistrate could not make the order of maintenance to have been effected from a date prior to his date of order that is from February, 1993.

4. I have carefully gone through the judgment and order passed by the learned Courts below. The learned Additional Sessions Judge has given a reasoned judgment, covering all the points that stood for determination. This one is a second revision and the scope of enquiry or interference with the two fact-finding Courts below are unwarranted except for exceptional reasons such as that the judgments

are patently perverse and have caused miscarriage of justice or that there is some inherent legal lacuna that can really upset the findings on the basis of facts and evidence on record. I find nothing of the sort happening here.

5. The learned Additional Sessions Judge has given cogent reasoning why he believed that the petitioner-husband was guilty of deliberate laches and wilful neglect in the matter of service of summons and also his repeated attempts by non-appearance on the dates of hearing thereby intentionally dragging the proceeding--which indeed is a part of socialistic legislation envisaged under Section 125 Cr. PC - to the detriment and distress of the distraught and distressed wife. So, there was apparently no reason why the case could not be heard *ex parte*.

6. As far as the quantum of maintenance to the tune of Rs. 450/- per month to each of the children is concerned that was based on evidence correctly appreciated and no interference is called for.

7. As a matter of fact this point is hardly agitated with any degree of emphasis at the bar.

8. The only crucial question that come up for dispute is whether the learned Magistrate could order maintenance from the date of application or from the date of his order. Here, in this case the order of the learned Magistrate was actually not from the date of order but was made to be effective from February, 1993. The order of the learned Magistrate was dated 13.7.94.

9. The learned lawyer for the petitioner, that is, the revisional applicant-husband among others cited a decision of this Court (N. K. Batabyal, J.) in the case of *Joydeb Chakraborty v. Bharati Chakraborty*, reported in 1994 C Cr LR (Cal) 90, wherein it was held as follows :

The main effect of passing an order of enhancement of maintenance retrospectively is, in the ultimate analysis imposing a liability upon one party. So the question is whether a legal liability can be created retrospectively when legislature is silent on the point. Under Section 125, Cr. PC the legislature has

specifically empowered the Magistrate to create the liability either from the date of the order or from the date of the application. But Section 127, Cr. PC has not expressly empowered the Magistrate to create that liability.

The order directing the enhancement of maintenance amount can stand only from the date of the order and not from the date of the application.

10. On the other hand, the learned Advocate for the opposite party-wife, in the first place has submitted that second revisional application, as is here in this case, is not maintainable in exercise of the inherent power. In support of this he has cited two case laws; (i) Ganesh Narayan Hegde v. S. Bangarappa and Ors., 1995 C Cr LR (SC) 291 and (ii) 1996 C Cr LR (Cal) 7, As to this, I have already indicated why there is plenty of substance in his submission as would appear from my discussion at para 4 of this judgment.

11. But the most important point of his submission is whether the order of maintenance could be made by the learned Magistrate from the date of application or from the date of order. On this point, the learned Advocate for the opposite parties have cited the case of Sankar Prasad Ghosh v. Laksmi Rani Ghosh, reported in 1998 C Cr LR (Cal) 101 (para 4), which is a judgment passed by a Division Bench of this Court (per Bhagabati Prasad Banerjee and Bhaskar Bhattacharya, JJ). It was held therein as follows :

'The provision of Sections 125 to 128 of the Code constitute a complete Code for itself. In absence of specific direction that the allowance should be paid from the date of application it would be from the date of the order. In our view, there is no requirement to record reasons special or otherwise for passing an order with effect from the date of the application which was filed by the wife for maintenance. The section does not require recording of reasons for awarding maintenance from the date of the application. If the Court specifically orders for payment of maintenance from the date of application it is not necessary to record reasons in writing for such decision.

It is a well-settled principle that if a statute is passed for the purpose of protecting the public against some evil or abuse it may be allowed to operate retrospectively

although by such operation it will deprive some person or persons of a vested right.'

12. In my view, this is a clear proposition of law on the point at issue as above and decisively settled. In this case, it was perfectly legitimate for the learned Magistrate to pass the order of maintenance from the date of the application for maintenance, at his discretion, considering the facts and circumstances of the case and no recorded reason for the same was necessitated.

13. I find, therefore, that there is no reason whatsoever to interfere with the impugned order of the learned Additional Sessions Judge, Murshidabad dated 18.2.1997 in Criminal Motion No. 285/94 and the same is affirmed. This revisional application has no merits and is, therefore, dismissed.

14. Let a copy of this order be sent down to the learned Courts below at once.

15. Let urgent xerox certified copy of this order be given to the learned Advocates, if applied for.

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