

Mohan Vs. Tula Devi

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Court : Kolkata

Decided On : Nov-23-1990

Reported in : 95CWN86,I(1991)DMC618

Judge : Sibaprasad Rajkhowa, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125, 126, 126(1) and 462

Appeal No. : C.R. No. 1048 of 1990

Appellant : Mohan

Respondent : Tula Devi

Advocate for Def. : Purnasish Gupta, Adv.

Advocate for Pet/Ap. : Tarit Baran Roy, Adv.

Disposition : Application rejected

Judgement :

Sibaprasad Rajkhowa, J.

1. This revisional application is directed against the Order dated 6-10-89 passed by the Learned Metropolitan Magistrate, 7th Court, Calcutta in Case No. M/29 of 1988 under Section 125 Criminal Procedure Code granting maintenance

allowance @ Rs. 500/-(300/- for the Opposite Party/Wife and Rs. 200/- for her minor daughter) per month.

2. The revisional application was filed beyond the period of limitation and so along with the revisional application, another application under Section 5 of the Limitation Act was filed.

3. The learned counsel for the petitioner submitted that the application under Section 5 of the Limitation Act may be disposed of after hearing the main revisional application and if the revisional application merits consideration on a point of law then the question of condoning the delay in filing the revisional application would automatically come for consideration.

4. On submission of the learned counsel for the petitioner, the revisional application was heard on merit. The learned counsel has submitted that the learned Magistrate had acted without jurisdiction. His submission is based on the fact that the 1st party/wife had mentioned her residential address as 'No. 67/50, Strand Bank Road, C.P.T. Quarter Calcutta-7' and had shown the residential address of the Opposite Party/ husband as 'Kayman P.W.1 K.P.D. East No. 51, C.G.R. Road, Calcutta-43'. If the address of the Opposite Party/husband is taken to be the correct address then, the learned counsel contends, the court at Alipore should be the proper forum and that the Bankshall Court i.e. the court of the Metropolitan Magistrate shall have no territorial jurisdiction to try the proceeding.

5. The above submission of the learned counsel for the petitioner has been contested by the learned counsel for the Opposite Party/wife in this revision. He has drawn my attention to the statement made by the husband in his cross-examination who was examined as D.W. 1 wherein he stated inter alia 'I work at Calcutta Port Trust and posted at K.P.D. East. My office stands within the jurisdiction of Calcutta Port Trust. I do admit that my office stands within the jurisdiction of South Port Police Station". Inviting the attention of the learned counsel for the petitioner to this statement I made a query as to whether this statement of D.W. 1 taken as a whole without reference to any other statement, would give jurisdiction to the learned Metropolitan Magistrate. The counsel for the petitioner has fairly conceded that this word give jurisdiction.

6. The learned counsel for the opposite party has referred to the provisions of Section 462 of the Code of Criminal Procedure. This section reads as follows :

'No filing, sentence or order of any Criminal Court shall be set aside merely on the ground that the enquiry, trial of other proceedings in the course of which it was arrived at or passed, took place, in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of Justice.' In my opinion the 'other proceedings' would include a proceeding under Section 125 Criminal Procedure Code also. The petitioner in this revisional application has not been able to show that for exercising wrong jurisdiction, there had been a failure of justice. The learned counsel for the opposite party has also drawn my attention to the procedure laid down under Section 126 of the Code. Clause I of Section 126 says that the proceedings under Section 125 can be taken against any person in any district (a) Where he is, or (b) Where he or his wife resides, or (c) Where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.

7. In view of the procedure laid down in Clause 1 of Section 126 I find that the learned Magistrate had not acted without jurisdiction as it was the admission of the revisional petitioner in the court below that his office stands within the jurisdiction of South Port Police Station and so it is presumed that he works for gain there.

8. In the result I do not find any force in the revisional application which stands rejected along with the application filed under Section 5 of the Limitation Act.