

Chanan Singh Vs. Nardu Devi and anr.

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Court : Himachal Pradesh

Decided On : Sep-13-2001

Reported in : II(2002)DMC562

Judge : M.R. Verma, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125 and 127

Appeal No. : Cr. M.M. No. 22 of 2001

Appellant : Chanan Singh

Respondent : Nardu Devi and anr.

Advocate for Def. : V.S. Chauhan, Adv.

Advocate for Pet/Ap. : B.N. Gupta and; Ramesh Thakur, Adv.

Disposition : Petition allowed

Judgement :

M.R. Verma, J.

1. The petitioner being aggrieved by the order dated 12.12.2000 passed by the learned Chief Judicial Magistrate, Kullu, whereby the appeal of the petitioner against the order dated 24.5.1997 passed by the Gram Panchayat enhancing the maintenance of the respondents has been dismissed, has preferred the present

petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') and under Article 227 of the Constitution of India.

2. The brief facts leading to the presentation of the present petition are that the respondent filed an application under Section 125 of the Code in the Court of the learned Chief Judicial Magistrate, Kullu claiming maintenance from the petitioner. The said application was allowed and monthly maintenance at the rate of Rs. 225/- in favour of respondent No. 1 and Rs. 125/- in favour of respondent No. 2 was allowed. After about 9-10 years of the order of awarding the aforesaid maintenance, respondents filed an application under Section 127 of the Code for enhancement of the maintenance in the Court of the learned Chief Judicial Magistrate, Kullu. He transferred the application to the learned Additional Chief Judicial Magistrate, Kullu, who sent the same to the concerned Gram Panchayat for disposal. The concerned Gram Panchayat vide its order dated 24.5.1997 enhanced the maintenance payable to respondent No. 1 to Rs. 500/- per month. However, no enhancement was made insofar as respondent No. 2 is concerned. Feeling aggrieved, the petitioner preferred an appeal in the Court of the learned Chief Judicial Magistrate, Kullu who dismissed the said appeal by the impugned judgment.

3. I have heard learned Counsels for the parties and have also gone through the records.

4. A preliminary objection was raised by the learned Counsel for the respondents regarding the maintainability of the present petition on the ground that the impugned order by virtue of the provisions of H.P. Panchayati Raj Act has become final between the parties and no appeal or revision, etc. lies against such an order.

5. There is no dispute that the Code does not apply to the proceedings under the H.P. Panchayati Raj Act. It is also not in dispute that the orders passed by the Appellate Court under Section 67 of the said Act are final and no appeal or revision lies against such orders. In view of this admitted position in law, an order passed by the Panchayat or the Appellate Court under the Panchayati Raj Act cannot be assailed by invoking the provisions of Section 482 of the Code. Therefore, a petition under Section 482 of the Code against such orders will not be

maintainable. The present petition, however, is also under Article 227 of the Constitution of India and is maintainable under the said Article.

6. On merits, it was contended by the learned Counsel for the petitioner that scope of interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India is very narrow and limited, therefore, the findings of facts as recorded by the Panchayat and the Appellate Court below cannot be interfered with in exercise of such powers.

7. It is well settled that the powers under Article 227 of the Constitution of India are exercised by the High Court in its discretion and cannot be claimed by any party as a right. The Article does not clothe the High Court with unlimited prerogative to correct all species of hardship or wrong decisions, but its exercise is restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principle of law or justice resulting or which would result in grave injustice unless the High Court interferes. The jurisdiction of the High Court under Article 227 of the Constitution of India is not original, appellate or revisional. Therefore, the interference will be warranted only to undo grave injustice and not to up set the concurrent findings of facts recorded by the inferior Courts merely for the reasons that such findings are erroneous. See : Kanta Devi v. Ram Prakash and Ors., (sic).

8. In the case in hand, there has been utter violation of the procedure prescribed for dealing with application under Section 127 of the Code. There is no dispute that none of the parties was given any opportunity to lead evidence. The Gram Panchayat proceeded on the assumption that the earlier maintenance was granted about 9-10 years before, therefore, the maintenance deserves to be increased without recording any evidence. The order passed by the Panchayat, on the face of it, is based entirely on the personal knowledge' of the concerned Panchayat regarding status of the parties and their economic conditions. No Court can decide a question of fact except on admission of the parties or on the basis of the evidence which may be led by the parties. Thus, in the absence of any admission by the parties or evidence led by them, the impugned order regarding enhancement of maintenance could not have passed by the Gram Panchayat.

9. The petitioner in his appeal before the Appellate Court below raised the question that the maintenance has been enhanced without any material whatsoever on the record. However, the said Court observed that since the amount of maintenance was enhanced after the record of 10 years and in view of the increased price index, therefore, there is no reason to interfere with the order passed by the Gram Panchayat. No such price index showing the increase in the prices of essential commodities has been produced and proved. Thus, the Appellate Court also maintained the order regarding the enhancement of maintenance in the absence of any evidence whatsoever before it. Thus, a complete go-bye had been given by the Panchayat as well as the Appellate Court below to the procedure prescribed by law in dealing with the claim as was made by the respondent and thus committed grave procedural irregularity and illegality resulting in grave injustice. Therefore, the impugned order cannot be sustained and the matter deserves to be remanded for decision afresh.

10. As a result, this petition is allowed and the impugned orders are set aside. The application of the respondents for enhancement of maintenance under Section 127 of the Code is remitted and transferred to the learned Chief Judicial Magistrate, Kullu, with the directions that he will register the application in his Court and shall proceed to dispose it of in accordance with law within three months from the date of appearance of the parties before him.

11. Parties are directed to appear before the learned Chief Judicial Magistrate, Kullu, on 15.10.2001.