

Smt. Padmo and ors. Vs. Surat Ram

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Court : Himachal Pradesh

Decided On : Apr-12-2002

Reported in : 2003CriLJ237,I(2003)DMC483

Judge : Kamlesh Sharma, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Section 125 and 125(3); ;
[Himachal Pradesh Panchayati Raj Act, 1994](#) - Sections 32, 71 and 71(2)

Appeal No. : Cri. M.M.O. No. 74 of 2001

Appellant : Smt. Padmo and ors.

Respondent : Surat Ram

Advocate for Def. : Harish Behal, Adv.

Advocate for Pet/Ap. : K.D. Batish, Addl. Adv. General

Judgement :

ORDER

Kamlesh Sharma, J.

1. This petition was registered on the complaint received by this Court from the petitioners on the administrative side.

2. Respondent is the husband of petitioner No. 1 and father of minor petitioners Nos. 2 to 4. The case of the petitioners is that having been deserted by the respondent, they filed an application under Section 125 of the Code of Criminal Procedure, 1973 (Cr. P.C. in short) for grant of maintenance in the Court of Addl. Chief Judicial Magistrate, Theog on 7-5-1996, who referred the matter to Gram Panchayat, Basa, Tehsil Theog, District Shimla, on 5-6-1996 for decision. The Gram Panchayat passed order dated 6-6-1997 granting maintenance of Rs. 300/- per month each to petitioners Nos. 1 and 2 and Rs. 200/- per month each to petitioners Nos. 3 and 4. In all, an amount of Rs. 1000/- per month was granted as maintenance to the petitioners.

3. On the failure of the respondent to pay the maintenance as per order of the Gram Panchayat, the petitioners filed an application for execution of the order dated 6-6-1997 and asked for payment of arrears of maintenance allowance amounting to Rs. 3400/- for the period from 7-5-1996 to 7-9-1996. Despite notice served upon the respondent by the Gram Panchayat to deposit the arrears of maintenance allowance within ten days, failing which the matter would be transferred to the Judicial Magistrate Ist Class, the respondent failed to appear before the Gram Panchayat and the application for execution was sent to the Judicial Magistrate, Theog for further action showing its inability to execute its order.

4. On receipt of the file, the Sub-Judge, Theog issued notices to the parties for 5-5-1998 when petitioner No. 1 appeared through her counsel and the respondent appeared in person who was directed to file reply. Despite two opportunities granted to the respondent, he failed to file reply and the matter was referred to Lok Adalat on 18-7-1998 with the hope that it might be reconciled. Since the proceedings of Lok Adalat are not on record, it cannot be said what happened before the Lok Adalat. However, the matter was again taken up by the Sub-Judge on 3-3-1999 and after hearing the parties he passed order dated 10-5-1999 that the file be sent back to the concerned Gram Panchayat for execution holding that there was no provision to send the file to his Court for execution by the Gram Panchayat. On receipt of the file, the Gram Panchayat did not take any further action in the matter.

5. In this backdrop, the petitioners again filed an application under Section 125, Cr. P. C. in the Court of the Additional Chief Judicial Magistrate, Theog on 9-4-1999 on the ground that since the earlier order passed by the Panchayat could not be executed, fresh order of maintenance may be passed by the said Court. Respondent filed reply to the petition and after recording evidence of the parties, order dated 17-7-2001 was passed by the Addl. Chief Judicial Magistrate, holding that the petition was not maintainable as the order of Panchayat granting maintenance still existed and the petitioners have not assailed the same. Hence the present petition.

6. When this matter came up for admission, this Court requested Shri K.D. Batish, learned Additional Advocate General to assist the Court. Thereafter on 5-4-2002, Shri Harish Behal, Advocate has put in appearance on behalf of the respondent as legal aid counsel. Both of them have made their submission.

7. In order to see the legality of the order dated 10-5-1999 passed by the Addl. Chief Judicial Magistrate, sending the file back to the Panchayat for execution stating that there is no provision under which it can be forwarded to his Court for execution, it is necessary to examine the scheme of the [Himachal Pradesh Panchayati Raj Act, 1994](#), (hereinafter referred to as 'the Act').

8. The provisions with regard to judicial functions and powers of the Gram Panchayats are contained in Chapter-IV of the Act, a perusal of which shows that the Gram Panchayats have been given powers in certain civil, criminal and revenue matters. However, this Court will refer to the provisions relating to criminal matters as the case in hand is under Section 125, Cr.P.C. and the nature of the proceedings under this Section is quasi criminal. Section 32 of the Act provides for offences which are cognizable by a Gram Panchayat committed within its jurisdiction including abetment of and attempts to commit such offences. It is:

'(1) Offences mentioned in Schedule-III or declared by the State government to be cognizable by a Gram Panchayat, if committed within the jurisdiction of a Gram Panchayat, and abetment of and attempts to commit such offences shall be cognizable by such Gram Panchayat.

(2) Application for maintenance under Section 125 of the Code of Criminal Procedure, 1973, shall be heard and decided by the Gram Panchayat. A Gram Panchayat may grant a maintenance allowance not exceeding five hundred rupees per month on such application without prejudice to any other law for the time being in force in this behalf.'

9. Sub-section (2) of Section 32 specifically provides for application for maintenance under Section 125, Cr.P.C. by a Gram Panchayat which may grant maintenance allowance not exceeding five hundred rupees per month without prejudice to any other law for the time being in force in this behalf.

10. Section 34 lays down a bar on the Courts to take cognizance of any case, suit or proceeding which is cognizable by a Gram Panchayat. Since the application for maintenance under Section 125, Cr.P.C. is to be heard and decided by Gram Panchayat as per Sub-section (2) of Section 32, the Judicial Magistrate Ist Class is required to forward such application, if filed in his Court, to the concerned Gram Panchayat. The intention of the legislature to give exclusive jurisdiction to the Gram Panchayats in respect of offences cognizable by it and application for maintenance under Section 125, Cr.P.C. is further fortified from Section 35 which provides for transfer of criminal proceedings pending before a Magistrate at any stage, if it appears that the case is triable by a Gram Panchayat and on transfer, the Gram Panchayat is required to try the case de novo. Sections 34 and 35 are as under :

'34. No Court shall take cognizance of any case, suit or proceeding which is cognizable under this Act by a Gram Panchayat established for the area to which the case, suit or proceeding relates, unless an order has been passed under Section 67.

'35. If, at any stage of the proceedings in a criminal case pending before a Magistrate, it appears that the case is triable by a Gram Panchayat, he shall at once transfer the case to that Gram Panchayat which shall try the case de novo.'

11. The proceedings under Section 125, Cr.P.C. being quasi criminal are covered under Section 34 read with Section 35 of the Act.

12. So far the penalty for criminal offences is concerned, limitations have been put on a Gram Panchayat as provided under Section 33. It is :

'33. A Gram Panchayat may impose a fine not exceeding one hundred rupees but shall not inflict a sentence of imprisonment either substantive or in default of payment of fine.'

13. The perusal of this section leaves no doubt that the Gram Panchayat has no powers to impose a sentence of imprisonment either substantive or in default of payment of fine. It can impose only fine not exceeding one hundred rupees.

14. Execution of decree or order is prescribed under Section 71 of the Act. It is :

'71. (1) A decree or order passed by a Gram Panchayat shall be executed in such manner as may be prescribed. If the property of the defendant is situated outside the jurisdiction of the Gram Panchayat passing such order or decree, it may transfer the decree or order for execution in the prescribed manner to the Gram Panchayat within whose jurisdiction the property may be situated and if there be no such Gram Panchayat then to the Court of the Sub-Judge within whose jurisdiction it may be situated and the said Gram Panchayat or the Sub-Judge, as the case may be, shall execute the decree or order as it were a decree or order passed by it or him.

(2) If a Gram Panchayat finds any difficulty in executing a decree, it may forward the decree to the Sub-Judge and the Sub-Judge shall then execute the decree as if it were a decree passed by him.

(3) An order under the Himachal Pradesh and Revenue Act, 1953, shall as far as possible, be executed as provided in Sub-sections (1) and (2). Sub-section (2) shall be read and construed as if for the word 'Sub-Judge' the words 'Collector concerned' were substituted.'

15. A perusal of this Section shows that it pertains to the decree or order passed in civil matters because it refers to the property of the defendant. In case of any difficulty in executing a decree, a Gram Panchayat may forward it to the Sub-Judge, who is required to execute the decree as if it were a decree passed by him

as provided under Sub-section (2). Though the word 'order' does not occur in Sub-section (2), yet it can be read therein as this sub-section is in continuation of Sub-section (1). So far criminal matters are concerned, Section 72 provides for recovery of fines as the Gram Panchayat can only impose a fine and that too not exceeding one hundred rupees as provided under Section 33. Section 72 is as under :

'72. The fine imposed in a case by a Gram Panchayat shall be recoverable in the manner prescribed. If the Gram Panchayat finds any difficulty in its recovery, it may request the Judicial Magistrate within whose jurisdiction the Gram Panchayat lies, to recover it and he shall recover it as if the sentence of fine had been passed by him.'

16. Though under this section, the fine is recoverable in the manner prescribed, but in the absence of any provision in the Rules, a Gram Panchayat may have recourse to the provisions of Section 421, Cr. P.C. which provide for issuance of a warrant for levy of fine. But looking to the procedure provided therein after issuance of a warrant for levy of fine, it will not be possible for the Gram Panchayat to recover the fine. Therefore, as provided under Section 72 if a Gram Panchayat finds any difficulty in the recovery of fine, it may request the Judicial Magistrate within whose jurisdiction it is situated to recover the fine as if the sentence of fine has been imposed by him. Except these two provisions there is no other provision under the Act which provides for the execution of the order of maintenance under Section 125, Cr. P.C. passed by a Gram Panchayat.

17. The order of maintenance under Section 125, Cr. P.C. can neither be considered a decree or an order passed by a Civil Court nor an order of fine passed by a Criminal Court. The proceedings under Section 125, Cr. P.C. being quasi-criminal, the legislature was required to make specific provision for the execution of order of maintenance. Despite this void in Chapter IV, it cannot be said that the order of maintenance passed by a Gram Panchayat under Section 125, Cr. P.C. is not executable. In the absence of any provision under the Act and the Rules framed thereunder, the provisions of Section 125, Cr. P.C. will be applicable. Subsection (3) of Section 125(3), Cr. P.C. provides for execution of

order of maintenance passed by a Panchayat. It is :

Sub-section 3 of Section 125 :

'If any person so ordered fails without sufficient cause to comply with the order, any such magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant to imprisonment for a term which may extend to one month or until payment if sooner made :

Provided that no warrant shall be issued for the recovery of any amount due under this Section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due :

Provided further that if such person offers to maintain his wife on conditions or her living with him, and she refuses to live with him, such Magistrate may consider any grounds or refusal stated by her, and may make an order under this Section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation -- If a husband has contracted a marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.'

18. A perusal of this sub-section shows that on the failure of a person to comply with the order of maintenance without sufficient cause, a warrant for levying the amount due to the manner provided for levying fines may be issued by a Magistrate. But since the Gram Panchayat is empowered to levy a fine of Rs. 100/~ only, it will not be able to issue a warrant for levying the amount due in the manner provided for levying fines, if the amount of arrears of maintenance is more than Rs. 100/-. Further, the Magistrate may sentence the defaulter for the whole or any part of each month's allowance remaining unpaid after execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made. But the Gram Panchayat cannot have recourse to this mode for execution of the order of maintenance too as it has no powers to impose

sentence of imprisonment.

19. Therefore, if after issuance of notice by the Gram Panchayat, the defaulter does not come forward to pay the amount of maintenance, it is difficult for the Gram Panchayat to execute the order of maintenance and the only course left for it is to forward the order of maintenance for execution to the Judicial Magistrate in whose jurisdiction it is situated.

20. Coming to the case in hand, this Court finds that the Gram Panchayat had rightly forwarded its order of maintenance for execution to the Addl. Chief Judicial Magistrate, Theog, but he took cognizance of it in his capacity as Sub-Judge and wrongly passed the order that the Gram Panchayat had no powers to forward the order of maintenance passed by it for execution to his Court. Even while passing the second order dated 17-7-2001 dismissing the second petition, the Addl. Chief Judicial Magistrate, has not cared to examine the provisions of law, with the result that the petitioners even after obtaining the order of maintenance in their favour as far back as on 6-6-1997 could not get a penny as maintenance from the respondent and the very purpose of the provisions of Section 125, Cr. P.C. is defeated.

21. In this view of the matter, the orders dated 10-5-1999 and 17-7-2001 are set aside and the Addl. Chief Judicial Magistrate, Theog, is directed to execute the order dated 6-6-1997 passed by the Gram Panchayat in accordance with law and the observations made hereinabove. Since the matter is pending for the last more than four years, the said Court is directed to expedite the matter and provide justice and succour to the hapless wife and children left in the lurch by the husband to fend for themselves.

22. A copy of this judgment may also be placed before the Hon'ble Chief Justice for considering the desirability of circulating a copy of this order to all the Judicial Magistrates in the State.

23. Before parting with this judgment, this Court places on record its appreciation of the assistance rendered by Shri K.D. Batish, learned Additional Advocate General appearing for the petitioners and Shri Harish Behal, learned legal aid

counsel appearing for the respondent.

24. A copy of this judgment be also sent to the Chief Secretary to the Govt. of Himachal Pradesh, to consider the desirability of amending the H.P. Panchayati Raj Act, 1994, to make appropriate provisions for execution of order passed by the Gram Panchayat under Section 125, Cr. P.C. in the light of the findings recorded hereinabove.

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