

Bansi Lal Vs. Pushpa Devi

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Court : Jammu and Kashmir

Decided On : Sep-30-1981

Reported in : 1982CriLJ1081

Judge : Adarsh Sein Anand, J.

Appellant : Bansi Lal

Respondent : Pushpa Devi

Judgement :

ORDER

Adarsh Sein Anand, J.

1. The respondent had been awarded maintenance allowance Under Section 488 Cr.P.C. at the rate of Rs. 30/- per month. She applied for a increase in the said allowance by filing an application Under Section 489, Cr.P.C. The learned Judicial Magistrate 1st class, Jammu, vide his Order dated 23-10-1980 held that the circumstances had changed and on account of those changed circumstances, enhancement in the maintenance allowance was warranted. He accordingly increased the maintenance allowance from Rs. 30/- to Rs, 70/- per . with effect from the date of the application under Section ; 489 Cr.P.C. Aggrieved, the petitioner husband approached the learned Sessions Judge, Jammu, against the order of enhancement, but his revision was dismissed. He has now come to this Court invoking its revisional jurisdiction.

2. The short, though important, question which requires determination in this petition is : Whether the Court has power to order alteration of allowance to be paid with effect from the date of the application seeking alteration or it can order the alteration only with effect from the date of the order?

3. Section 489(1) Cr.P.C. reads as follows :

489. Alteration in allowance.- (1) On proof of a change in the circumstances of any person receiving Under Section 488 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit; Provided that if he increases the allowance, the monthly rate of five hundred rupees in the whole be not exceeded.

4. This section, on its plain reading, furnishes the ground on which the court passing an order Under Section 488 Cr.P.C. can modify the said order. Before such an order can be passed, the court has to be satisfied about the changed circumstances. The changed circumstances envisaged in the section are a change in the pecuniary or other circumstance of the party paying or receiving the allowance, which justify the alteration of the order of maintenance. Such an order for alteration of the allowance can be made therefore, only from the date of the order Under Section 489 Cr.P.C. and not from the date of the application seeking alteration. The trial magistrate, while making alteration in the allowance, directed the same to be effected from the date of the application seeking enhancement of the allowance. This he cannot do. Whereas Under Section 488. Cr P. C. legislature has left it to the discretion of the Magistrate to award maintenance either from the date of the application or from the date of the order, no such discretion has been left to him while dealing with an application Under Section 489 Cr P. C. Since legislature itself did not provide in Section 489, Cr.P.C. that the Magistrate could date back the order of alteration to the date of application, the learned Magistrate could not exercise the power, which has not been vested in him. Courts have to act within the strict limitations set out for the exercise of their jurisdiction and they cannot overstep the same on any equitable ground.

5. I, therefore, hold that a Magistrate has no jurisdiction to order the alteration of the maintenance allowance from the date of the application seeking the alteration. He can order the alteration' (increase or decrease) only from the date of the order itself and which in this case would be with, effect from 23-10-1980 and not from any other date prior to it.

6. In the view that I- have taken, I find support from AIR 1949 Cal 584 :1949) 50 Cri LJ 1006 also

7. This revision petition accordingly succeeds and the orders of the Courts below are modified to the extent that the enhanced maintenance allowance shall be payable to the respondent with effect from 23rd October, 1980 i.e., the date of order allowing the enhancement and not from the date of the application seeking enhancement.

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