

Yerram Vinod Vs. the State of A.P.

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Court : Andhra Pradesh

Decided On : Jan-20-2011

Judge : A.Gopal Reddy, J.

Acts : Code Of Criminal Procedure (CPC) - Sections 482, 125 - Chapter IX; [Hindu Adoptions and Maintenance Act, 1956](#) - Section 20(3)

Appeal No. : Crl.P.No.7303 of 2007

Appellant : Yerram Vinod

Respondent : The State of A.P.

Advocate for Pet/Ap. : Mummaneni Srinivasa Rao, Adv.

Judgement :

:Oral order:

1. This Criminal Petition under Section 482 of the Code of Criminal Procedure (Cr.P.C.) is filed to quash the orders passed by the Principal Sessions Judge, Khammam in Crl.R.P.No.1 of 2007 dated 18-09-2007, whereby he dismissed the revision filed by the petitioner upholding the orders of the Judicial Magistrate of First Class, Bhadrachalam awarding maintenance to the major daughters in M.C.No.2 of 2006 dated 14-12-2006.

2. Heard the learned counsel for the petitioner and learned Public Prosecutor for respondent No.1. In spite of service of notice none appears for the respondents 2

to 4.

3. Learned counsel for the petitioner contends that the respondents 3 and 4 who are major daughters are entitled to maintenance under the personal laws, viz., [Hindu Adoptions and Maintenance Act, 1956](#) (for short "the Act") but not under Section 125 Cr.P.C. Learned counsel also contends that the Magistrate cannot award maintenance under Section 125 Cr.P.C. to the major daughters, who are entitled to maintenance under Section 125 Cr.P.C. till they attain majority but not thereafter. Since the respondents 3 and 4 are aged 31 and 29 years respectively, not suffering from physical or mental abnormality or injury to maintain themselves are not entitled to maintenance. The learned Magistrate will not have jurisdiction to award maintenance under Section 20(3) of the Act in view of Family Courts Act, 1984 and it is only Family Court which is entitled to award maintenance. Therefore, the Magistrate committed an error in awarding maintenance by applying the provisions of Section 20(3) of the Act which is liable to be set aside.

4. In view of the above submission, the point that arises for consideration in this petition is:

"Whether the Magistrate can award maintenance to major daughters in a petition filed under Section 125 Cr.P.C. with the aid of Section 20(3) of the Act."

5. The petitioner while admitting the relationship with respondents 2 to 4 denied the liability to maintain them stating that respondent No.2/wife is gainfully employed as Supervisor (Anganwadi) in I.C.D.S. Department at Kukunuru village and getting salary of Rs.5,000/- per month; the 4th respondent was married to one Poduthuri Rama Rao and also employed as Anganwadi Teacher in ICDS Department and getting Rs.1,200/- per month and elder daughter-3rd respondent is also major and not entitled to maintenance. The evidence adduced by the parties discloses that the petitioner/husband is living with another woman and also begot a son through her whom he contacted second marriage; he failed to take back respondents 3 and 4 to his lawful custody and did not sent any amount of maintenance was them; the petitioner is employed as teacher and got monthly salary of Rs.18,000/- per month; the petitioner failed to establish that the 4th respondent (2nd daughter) is working as Anganwadi Teacher and she was

married, awarded maintenance of Rs.800/- to respondents 3 and 4; since the 2nd respondent/wife is gainfully employed, the petitioner is not obliged to provide maintenance to her, as she is able to maintain herself.

6. Questioning the same the petitioner carried the matter in revision before the Principal Sessions Judge, Khammam, who by the impugned order dated 18-09-2007 dismissed the revision confirming the order of the lower court. Hence, the present quashment petition.

7. Section 8 of the Family Courts Act, 1984 excluded the jurisdiction of civil and criminal courts on establishment of Family Court in any area including the jurisdiction of the Magistrate, in relation to such area have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973. Under sub-section (c) of Section 8 on establishment of Family Court for any area, every suit or proceeding of the nature referred to in the Explanation to sub-section (1) of Section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 which is pending immediately before the establishment of such Family Court before any District Court or Subordinate Court or before the Magistrate under the said code shall stand transferred to such Family Court on the date on which it is established. Therefore, on exclusion of civil or criminal court jurisdiction under Section 8, Family Court has to be established for the area.

8. Admittedly, in the present case, Judicial Magistrate of First Class, Bhadrachalam before whom the M.C. proceedings are initiated is an Agency Court established in the year 2006 vide G.O.Ms.No.36, Law (LA & J Home Courts C) Department, dated 25-02-2006 for trial of criminal cases arising from the agency areas covered by Bhadrachalam Town, Bhadrachalam Rural etc. The Family Court, Khammam is conferred with the jurisdiction over the entire Khammam municipal area, under Section 3 of the Family Courts Act, 1984 vide G.O.Ms.No.136, Law (LA & J Home Court C) Department, dated 11-09-2006. Therefore, jurisdiction conferred on the Judicial Magistrate of First Class, Bhadrachalam, which is an Agency Court, do not cover the jurisdiction of the Family Court, Khammam on its establishment. Where there is no Family Court is established, the Senior Civil Judge's Courts are conferred with the jurisdiction to

deal with the matrimonial matter. In the present case, the Senior Civil Judge's Court, Kothagudem will have jurisdiction over the Court of Judicial Magistrate of First Class, Bhadrachalam to try the cases under the Act.

9. Under Section 125 Cr.P.C. a father is liable to maintain his children, legitimate or illegitimate. Section 488 of old Cr.P.C. if any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs. Under the new Code sub-sections (1) to (5) corresponds to sub-sections (1) to (5) of old Section 488 made certain changes in sub-section (1) clauses (a) to (d) which has been substituted for the words "his wife or his legitimate or illegitimate child unable to maintain itself". The principal changes introduced are:

1. In the case of wife the order can be passed only if she is unable to maintain herself [sub-section 1(a)].
2. The benefit of the provision has been extended to a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried [Clause (b) to Explanation in sub-section (1)].
3. Only minor children, legitimate or illegitimate, whether married or not come under the purview of this section with a proviso that in case of a minor married daughter order can be passed on the father if the husband of the minor female child is not possessed of sufficient means [Sub-section 1(b) and proviso].
4. In case of a major child, legitimate or illegitimate other than a married daughter the liability arises only when the child is by reason of physical or mental abnormality or injury unable to maintain itself [sub-section 1(c)].

5. The benefit has also been extended to parents who are unable to maintain themselves [sub-section 1(d)].

10. It is not in dispute that the proceedings in the civil court are substantial, whereas the proceedings under Section 125 Cr.P.C. are of a summary in nature. Once the civil court of competent jurisdiction comes to the conclusion that the wife is not entitled to maintenance, the criminal court under Section 125 Cr.P.C. cannot sit in appeal over the said decision. A father is liable to maintain his children, legitimate or illegitimate. Under Section 488 of the old code maintenance covered cost of college education till the child was old enough to earn his living. The conflict of laws as to whether child in the section means, only a minor child or is irrespective of age, "unable to maintain herself" has now been settled by incorporating sub-section (1)(c) to Section 125 Cr.P.C.1973. Under the new Code only minor children unable to maintain themselves are entitled to claim maintenance from the father or the mother. In case a major children only those who through some mental or corporal defect or injury are unable to maintain themselves are entitled to maintenance under Section 125 (1) (c).

11. Once the concept of majority is imported into Section 125(1) (c) a major child who is an imbecile or otherwise handicapped will fall outside the purview of this section. In view of the same, unless the respondents 3 and 4 major daughters establish that they are covered by section 125(1) (c) they cannot claim maintenance under Section 125 Cr.P.C. but are entitled to maintenance under Section 20(3) of the Act on satisfying that they are unable to maintain themselves.

12. Both the courts below fell in error in understanding the principles laid down in NOOR SABA KHATOON v. MOHD. QUASIM¹ and JAGDISH JUGTAWAT v. MANJU LATA².

13. In NOOR SABA KHATOON's case (1 supra) the Magistrate directed the husband to pay maintenance to the wife at the rate of Rs.200/- per month and three minor children at the rate of Rs.150/- per month till they attain the age of majority. While the matter rested, the husband divorced the wife and thereafter filed an application before the Magistrate seeking modification of the order, awarding maintenance, in view of the provisions of the Muslim Women (Protection

of Rights on Divorce) Act, 1986 (for short "the 1986 Act"). The learned Magistrate modified the order insofar as the grant of maintenance to the wife is concerned while maintaining the order granting maintenance to each of the three minor children but found that the right to maintenance under Section 125 Cr.P.C. insofar as three children are concerned was not affected by the 1986 Act in any manner. The revision filed by the husband before the Additional Judge was dismissed. On filing a petition under Section 482 Cr.P.C. challenging the correctness of that part of the order of the revisional court, which upheld the right to maintenance of the three minor children under Section 125 Cr.P.C. The High Court accepted the plea of the husband/father that vide Section 3 (1) (b) of the 1986 Act a divorced Muslim woman is entitled to claim maintenance from her previous husband for her minor children only for a period of two years from the date of birth of the concerned child and that the minor children were not entitled to claim maintenance under Section 125, Cr.P.C. after the coming into force of the 1986 Act and held that the two children who completed two years prior to filing of the petition for grant of maintenance and as such those two children are not entitled to the grant of any maintenance under Section 125 Cr.P.C. and that the third child was entitled to receive maintenance till she attained the age of two years. With such modification the petition was allowed. On further appeal, the Supreme Court held as under:

"...that the children of Muslim parents are entitled to claim maintenance under Section 125 Cr.P.C. for the period till they attain majority or are able to maintain themselves, whichever is earlier, and in case of females, till they get married, and this right is not restricted, affected or controlled by divorcee wife's right to claim maintenance for maintaining the infant child/children in her custody for a period of two years from the date of birth of the child concerned under Section 3 (1) (b) of the 1986 Act. In other words Section 3 (1) (b) of the 1986 Act does not in any way affect the rights of the minor children of divorced Muslim parents to claim maintenance from their father under Section 125, Cr. P. C. till they attain majority or are able to maintain themselves, or in the case of females, till they are married."

14. In JAGDISH JUGTAWAT's case (2 supra) the wife and two children filed an application under Section 125 Cr.P.C. seeking maintenance before the Family Court. The Family Court granted maintenance to them. A revision was filed by the

husband contending that respondent No.3 was entitled to maintenance only till she attains majority and not thereafter. The High Court accepting the legal position that under Section 125 Cr.P.C. a minor daughter is entitled to maintenance from her parents only till she attains majority but declined to interfere with the order passed by the Family Court which entitled to award maintenance under Section 20 (3) of the [Hindu Adoptions and Maintenance Act, 1956](#) till her marriage. The Supreme Court after referring the judgment in NOOR SABA KHATOON's (1 supra) and the principles laid down therein, viz., Section 125 Cr.P.C. does not fix liability of parents to maintain children beyond attainment of majority, read the said provision and Section 3 (1) (b) of the Muslim Women (Protection of Rights on divorce) Act together and that under the latter statutory provision liability of providing maintenance extends beyond attainment of majority of a dependent girl, held no exception can be taken to the judgment/order passed by the learned Single Judge for maintaining the order passed by the Family Court which is based on a combined reading of Section 125 Cr.P.C. and Section 20 (3) of the Act.

15. In the above case, Family Court conferred jurisdiction to award maintenance under Section 125 Cr.P.C. or under Section 20(3) of the Act; hence, the award of maintenance was sustained but the same is not the case on hand. Admittedly, the Magistrate Court at Bhadrachalam is an Agency Court and conferred with the jurisdiction to decide the cases under Cr.P.C. only but not conferred with civil jurisdiction. Since the Magistrate will not have jurisdiction to try the case under the Act, which can be awarded only by Senior Civil Judge, Kothagudem until the Family Court is established, the order passed by the Magistrate awarding maintenance is without jurisdiction, the same cannot be sustained and it is accordingly set aside. The parties are at liberty to avail the remedies under the Act.

16. The Criminal Petition is accordingly allowed.

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