

Mayandi Vs. Ananthammal

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Court : Chennai

Decided On : Feb-10-2012

Judge : P.R.Shivakumar, J.

Acts : Code of Criminal Procedure(CrPC) - Section 127, 125, 397

Appeal No. : Crl.R.C.(MD)No.500 of 2011 and M.P.(MD) No.1 of 2011

Appellant : Mayandi

Respondent : Ananthammal

Advocate for Def. : Mr.M.S.Jawaharlal, Adv.

Advocate for Pet/Ap. : Mr.H.Arumugam, Adv

Judgement :

Criminal Revision Case is filed under Section 397 r/w 401 Cr.P.C praying to set aside the order passed in M.C.No.47 of 2009 dated 19.04.2011 on the file of the Chief Judicial Magistrate Court, Tirunelveli.

ORDER

1. Notice before admission was ordered and served on the respondent. The respondent is represented by a counsel. The present criminal revision case has been filed against an order of the learned Chief Judicial Magistrate, Tirunelveli

made in M.C.No.47 of 2009 on 19.04.2011 enhancing the monthly maintenance amount awarded by the said court in the earlier order from Rs.450/- to Rs.1,250/-.

2.The said order came to be passed in a petition filed under section 127 Cr.P.C seeking enhancement of monthly maintenance amount, challenging the said order on the ground that the order is too onerous for the petitioner as he has been directed to pay a major chunk of his income derived as a pensioner. The respondent, who has entered appearance through counsel resists this revision contending that the meagre amount of Rs.1,250/- awarded as monthly maintenance to the respondent cannot be said to be unreasonable or excessive.

3.The submissions made by Mr.H.Arumugam, learned counsel for the petitioner and Mr.M.S.Jawaharlal, learned counsel for the respondent have been heard. The materials available on record have also been perused.

4.The respondent Ananthammal is the divorced wife of the petitioner Mayandi. After such divorce, the respondent filed a petition under section 125 Cr.P.C, in which, an order came to be passed on 20.1.1989 directing payment for a sum of Rs.250/- per month as maintenance to the respondent herein. The said amount was enhanced to Rs.450/- by an order dated 4.2.2003. Due to the escalation of the prices of commodities and the standard of living, expressing the said amount to be insufficient, the respondent again approached the learned Chief Judicial Magistrate, Tirunelveli for enhancement of the maintenance amount under section 127 Cr.P.C. The learned Chief Judicial Magistrate, Tirunelveli, after hearing, passed the impugned order directing the petitioner to pay maintenance to the respondent at the rate of Rs.1,250/- per month. The said order is sought to be challenged in the revision.

5.The learned counsel for the petitioner would submit that the order of the learned Chief Judicial Magistrate suffers from defect and infirmity, in view of the fact that the petitioner as a pensioner was receiving a sum of Rs.3,141/- alone as pension was not taken into account. It is the further contention of the learned counsel for the petitioner that the learned Chief Judicial Magistrate also failed to take into account that the respondent was getting solatium from the Government as a destitute woman.

6.Per contra, learned counsel for the respondent would submit that the petitioner's actual pension is more than Rs.5,000/- and the petitioner got a lump-sum on the commuted value of pension and that the same is the reason why the reduced pension of Rs.3,134/- is being received by the petitioner per month. Though, the learned counsel for the petitioner would contend that the learned Chief Judicial Magistrate failed to take into consideration the fact that the petitioner is a pensioner and the petitioner is only in receipt of pension, a perusal of the order of the court below will show that in the counter filed by the petitioner before the lower court nothing was mentioned about his retirement, perhaps, since the petitioner retired on superannuation only subsequent to the filing of the counter. Even then the revision petitioner had not chosen to file an additional counter with the permission of the court below informing the fact that he had retired subsequent to the filing of the original counter. On the other hand, only an argument was sought to be advanced to the effect that the revision petitioner had retired in May 2010 and was in receipt of a meagre sum as pension. No evidence was led on the side of the revision petitioner to show that he had retired from service and was in receipt of pension alone. Under such circumstances, the court below cannot be found fault with for not accepting the contention of the revision petitioner, regarding which no averment was made in the counter and no evidence was adduced.

7.Learned counsel for the revision petitioner, however produced a copy of the pension order dated 01.06.2010 for the perusal of this court. As per the pension order, the monthly pension has been fixed as Rs.5,235/-, out of which Rs.2,094/- is deducted as commuted portion. Apart from the fact a substantial amount was obtained by the revision petitioner as commuted value of pension, which caused the reduction of the monthly basic pension, the petitioner is also eligible to the dearness relief at specified percentage applicable on the date of passing of the pension sanction order and in future at such rate sanctioned from time to time. The pension payment order shows that the dearness relief applicable on 01.06.2010 was 35%. If that portion is also added then the total pension, even after deducting the commuted portion, will come to Rs.4,240/-. In the light of the same, this court does not feel that a sum of Rs.1,250/- directed to be paid as monthly maintenance to the respondent is not on the higher side and it cannot be termed unreasonable.

The contention of the petitioner that direction to pay such an amount as monthly maintenance to the respondent is onerous also cannot be accepted.

8. So far as the other contention that the petitioner was in receipt of pension for destitute woman from the Government is concerned, no evidence has been adduced and no document has been produced. Therefore, there is nothing wrong in the order of the learned Chief Judicial Magistrate holding the said contention of the revision petitioner to be one not substantiated by evidence. For all the reasons stated above, this court comes to the conclusion that there is no merit in the revision and the revision deserves dismissal.

9. Accordingly, this criminal revision case is dismissed. Consequently, connected Miscellaneous Petition is closed.

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