

(2014) 04 MAD CK 0172

In the Madras High Court

Case No : Crl. O.P. No. 12206 of 2009 and M.P. Nos. 1 of 2009 and 1 of 2010

D. Prabhu Srinivasan

APPELLANT

Vs

Dr. G. Ramaprabha and Minor Satishkumar, rep. by mother
and guardian Dr. G. Ramaprabha

RESPONDENT

Date of Decision : 25-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 397, 397(1), 397(2), 397(3)

Citation : (2014) 2 LW(Cri) 133

Hon'ble Judges : G. Chockalingam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

G. Chockalingam, J.—This petition has been filed by the petitioner u/s 482 of the Criminal Procedure Code against the order passed by the learned Sessions Judge, Nagapattinam, in Criminal Revision Petition No. 29 of 2008, dated 29.04.2009 modifying the order of the learned Judicial Magistrate No. I, Mayiladuthurai, in M.C.No.24 of 2007, dated 16.06.2008.

2. The first respondent herein has filed a petition u/s 125 of Cr.P.C. in M.C.No.24 of 2007 against the petitioner herein before the learned Judicial Magistrate No. I, Mayiladuthurai, seeking maintenance for herself and for her minor son. The learned Judicial Magistrate, after hearing both the parties and on appreciation of oral and documentary evidence, allowed the maintenance petition filed by the first respondent/wife and directed the petitioner herein/husband to pay a sum of Rs. 50,000/- per month to the first respondent herein/first petitioner in M.C.No.24 of 2007 and Rs. 10,000/- per month to the second respondent herein/second petitioner in M.C.No.24 of 2007. Aggrieved by the aforesaid order, the petitioner herein filed a petition in Crl.R.C.No.29 of 2008 before the learned Sessions Judge, Nagapattinam. The learned Sessions Judge, after examining the documents and also analyzing the evidence, partly allowed the criminal revision case and modified the order passed by the learned Judicial Magistrate No. 1,

Mayiladuthurai, in M.C.No.24 of 2007, dated 16.06.2008 to the extent that the husband was directed to pay a sum of Rs. 30,000/- per month to his wife and Rs. 10,000/- per month to his son from the date of filing of maintenance case. As against the order passed by the learned Sessions Judge, the petitioner has preferred this criminal original petition before this Court.

3. The learned counsel appearing for the petitioner argued that the first respondent had initiated proceedings before the criminal Court even when the matter seeking same relief was pending before the civil Court. The learned counsel appearing for the petitioner further argued that it is settled law that two parallel proceedings seeking same relief cannot be initiated more particularly one in civil Court and other in a criminal Court. It is further argued by the learned counsel for the petitioner that the present criminal original petition cannot be said to be a second revision. In support of his contention, the learned counsel for the petitioner has relied upon a decision of the Hon''ble Apex Court reported in Krishnan and another Vs. Krishnaveni and another, . The learned counsel concluded his argument by contending that the courts below have passed orders without proper application of mind and that the said orders have to be set aside.

4. Per contra, the learned counsel appearing for the respondents contended that it is settled law that a second revision cannot lie u/s 482 of Cr.P.C. In support of his contention, he relied upon a decision of the Hon''ble Apex Court reported in Rajathi Vs. C. Ganesan, .

5. This Court has considered the submissions made by the learned counsel on either side and perused the records.

6. Before going into the merits of the contention raised by the learned counsel appearing for the parties, it is relevant to extract Section 397 Cr.P.C.

397. Calling for records to exercise powers of revision.- (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding. Sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, any may, when calling for such record, direct that the execution of any sentence or order be suspended and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.- All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to

the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

A reading of sub-section 3 of Section 397 would make it crystal clear that if an application under this Section has been made by any person either to the High Court or to the Sessions Court, no further application by the same person shall be entertained by the other of them.

7. Admittedly, there is no much dispute regarding the facts involved in this case. Further, as against the order passed by the learned Magistrate in M.C.No.24 of 2007, the petitioner/husband had preferred a first revision before the learned Sessions Judge, Nagapattinam, and after the order passed in the revision by the Sessions Judge, the petitioner herein preferred this second revision before this u/s 482 Cr.P.C. Now the main question is as to whether the second revision preferred by the petitioner/husband is maintainable or not?

8. The learned counsel appearing for the respondents relied upon a decision of the Hon"ble Supreme Court reported in Rajathi Vs. C. Ganesan, , wherein at paragraph Nos. 5 and 10, the Hon"ble Apex Court has held as follows:-

5. Proceeding u/s 125 of the Code are of summary nature. This Section is meant to provide immediate relief to the wife, minor children and parents, who are unable to maintain themselves. A maximum of Rs. 500/- per month can be granted to the wife under this Section. This will be when husband having sufficient means neglects or refuses to maintain her, she being unable to maintain herself. Section 125 we may quote in extenso :-

125. Order for maintenance of wives, children and parents.-(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

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, father or mother, 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 may from time to time direct :

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if

married, is not possessed of sufficient means.

Explanation.-For the purpose of this Chapter,-

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.

(3) 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 condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of 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 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.

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reasons, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reasons she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

If we refer to proviso to sub-section (3) of Section 125 were a husband offers to maintain his wife on the condition of her living with him and she refuses to live with him a Magistrate may consider any ground of refusal stated to her and nevertheless make an order notwithstanding such offer, if the Magistrate is satisfied that there is just ground for so doing. Explanation to the proviso states that if a husband has contracted marriage with any other woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live

with him.

10. We are not going into the question if the High Court on examining the case on merit was correct in coming to the conclusion that the wife was possessed of sufficient means and was able to maintain herself. In the present appeal. We are only concerned to see if the High Court was justified in invoking its inherent powers u/s 482 of the Code and we do not think the High Court was right.

9. In the above said ruling, the Hon"ble Apex Court, after examining the facts of the case and on considering the ruling of the Hon"ble Apex Court reported in Krishnan and another Vs. Krishnaveni and another, , (cited by the learned counsel for the petitioner) passed the following judgments:-

11. In Krishnan and another Vs. Krishnaveni and another, this Court explained the scope and power of the High Court u/s 482 of the Code. The question before the Court was if in view of the bar of second revision under sub-section (3) of Section 397 of the Code was prohibited, inherent power of the High Court is still available u/s 482 of the Code. This Court said as under:

Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused/complainant - cannot be allowed to take recourse to the revision to the High Court u/s 397(1) or under inherent powers of the High Court u/s 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu power u/s 401 and continuous supervisory jurisdiction u/s 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with the inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power u/s 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justice can be ensured only when trial is conducted expeditiously.

In the present case, the High Court minutely examined the evidence and came to the conclusion that the wife was living separately without any reasonable cause and that she was able to maintain herself. All this High Court did in exercise of its powers u/s 482 of the Code which powers are not a substitute for a second revision under sub-section (3) of Section 397 of the Code. The very fact that the

inherent powers conferred on the High Court are vast would mean that these are circumscribed and could be invoked only on certain set principles.

12. It was not necessary for the High Court to examine the whole evidence threadbare to exercise jurisdiction u/s 482 of the Code. Rather in a case u/s 125 of the Code trial Court is to take a prima facie view of the matter and it is not necessary for the court to go into the matrimonial disputes between the parties in detail. Section provides maintenance at the rate of Rs. 500/- per month. There is outcry that this amount is too small. In the present case, however, we are quite surprised that the court granted paltry amount of Rs. 200/- per month as maintenance which was confirmed in the revision by the Sessions Court and the High Court thought it fit to interfere u/s 482 of the Code in exercise of its inherent jurisdiction.

Whatever may be the merit of the case, High Court wrongly exercised its jurisdiction u/s 482 of the Code in passing the impugned order. The appeal is allowed and the impugned order dated December 4, 1997 of the High Court is set aside.

10. The above said ruling is squarely applicable to the facts of the present case. In this case also, the learned Judicial Magistrate No. I, Mayiladuthurai, passed an order directing the petitioner to pay maintenance to his wife/first respondent and to his son/second respondent herein and the said order was modified by the learned Sessions Judge, Nagapattinam.

11. In view of the above cited ruling rendered by the Hon''ble Apex Court, the second revision viz., this petition filed by the petitioner u/s 482 Cr.P.C. is not at all maintainable according to law. Hence, in view of the above circumstances, this petition is liable to be dismissed.

12. For the reasons stated above, this criminal original petition is dismissed. Consequently, the connected miscellaneous petitions are closed.