
(1993) 12 KL CK 0019
In the High Court Of Kerala
Case No : Criminal M.C. No. 1708 of 1993

G.M. Nair

APPELLANT

Vs

Jaga Damma

RESPONDENT

Date of Decision : 20-12-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 128
Family Courts Act, 1984 — Section 7(2)

Citation : (1994) 1 ALT(Cri) 376 : (1994) 1 DMC 621 : (1994) 2 ILR (Ker) 576

Hon'ble Judges : K.T. Thomas, J

Bench : Single Bench

Advocate : Nemo, for the Appellant; S. Sirljagan. Advocate, S. Vijayakumar and An Amicus Curiae, for the Respondent

Judgement

K.T. Thomas, J.

A husband and wife fell out and the wife approached the Court of a Chief Judicial Magistrate claiming maintenance allowance from the husband u/s 125 of the Code of Criminal Procedure (for short "the Code"). The Chief Judicial Magistrate granted an order directing the husband to pay her monthly allowance at the rate of Rs. 500/-. Thus far there was not much hitch. But the trouble started when she filed a petition before a Judicial Magistrate of first class for enforcement of the order and the said Magistrate issued notice to the husband. The present Criminal Miscellaneous Case has been filed by the husband contending that with the establishment of Family Court covering the area concerned no Magistrate has jurisdiction to continue any proceeding under Chapter IX of the Code.

1. I issued notice to the respondent - wife on this Criminal Miscellaneous Case and requested Shri S. Vijayakumar, Advocate to argue as amicus curiae in the matter. I express my gratitude to him as he readily reciprocated and addressed arguments ably.

2. There is no dispute that a Family Court has been established in respect of the

area concerned. Chapter III of the Family Courts Act, 1984 (for short "the Act") deals with jurisdiction. The effect of Section 7(1) is to transpose jurisdiction to a Family Court in respect of all matters enumerated therein which hitherto were exercisable by District Courts or Subordinate Civil Court. Sub-section (2) says that a Family Court shall also have the jurisdiction exercisable by a Magistrate of first class under Chapter IX of the Code. Section 8 of the Act is entitled "Exclusion of jurisdiction and pending proceedings". The language used for ousting jurisdiction of Magistrate is so unambiguous that there is no scope for any doubt in the matter. The Section says that when a Family Court has been established "no Magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code."

3. An attempt was made to show that Section 18 of the Act protects the powers of regular Courts to execute the orders. But a reading of that Section shows that it only speaks about the manner in which execution of decrees and orders are to be carried out. It does not concern about the venue or the forum in which the proceedings are to be followed. Sub-section (2) of Section 18 reads thus :

"An order passed by a Family Court under Ch. IX of the Code of Criminal Procedure, 1973 shall be executed in the manner prescribed for the execution of such order by that Code."

The said Sub-section is not liable to be interpreted to retain jurisdiction with any Magistrate for enforcement of the order. Support to this view can be gathered from Sub-section (3) which says that "a decree or order may be executed either by the Family Court which passed it or by the other Family Court or Ordinary Civil Court to which it is sent for execution." Hence even the Civil Court gets jurisdiction to execute the orders passed by a Family Court only in the eventuality of such decree or order being sent to such Civil Court by the Family Court. It must be noted that there is no such provision in regard to a Criminal Court.

4. It was contended that jurisdiction of a Magistrate to enforce the order has not been completely taken away by Section 7(2) of the Act. In other words, the contention is that, what was taken away is only "the jurisdiction exercisable by a magistrate of the first class under Chapter IX of the Code". My attention was invited to Section 128 of the Code which empowers "any Magistrate" to enforce such an order. On its basis the contention was expatiated that since even a Magistrate of second class is empowered to enforce the order, Section 7(2) of the Act cannot be interpreted as taking away the jurisdiction of a Magistrate to enforce or execute the orders. The said contention cannot be accepted in the light of the unambiguous legislative mandate reflected in Section 8 of the Act that "no Magistrate shall" in relation to such area (where a Family Court has been established) have or exercise "any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure." The language is explicit that no Magistrate shall "have" or shall "exercise" any jurisdiction. Exclusion of jurisdiction or Magistrates is thus lock stock and barrel. Hence the employment of the word

"first class" to qualify a Magistrate in Section 7(2) of the Act does not provide even a straw for the Magistrate Court to cling on claiming jurisdiction to execute the order passed under Chapter IX of the Code in areas covered by a Family Court.

5. The upshot of the discussion is that the Judicial Magistrate of first class, before whom the execution proceeding is pending, has no jurisdiction to continue with the execution proceedings.

I therefore, direct the learned Magistrate to transfer the proceedings to the Family Court concerned forthwith.

Crl.M.C. is disposed of in the above terms.