

(1991) 07 AP CK 0021

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 1977 of 1990

Guthikonda Sri Hari Prasada Rao

APPELLANT

Vs

Guthikonda Lakshmi Rajyma and Others

RESPONDENT

Date of Decision : 02-07-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 482, 488, 488(6), 61

Citation : (1991) 2 ALT 658 : (1992) 1 APLJ 37 : (1991) CivCC 862 : (1992) CriLJ 1594 : (1992) 2 RCR(Criminal) 231

Hon'ble Judges : D.J. Jagannadha Raju, J

Bench : Single Bench

Advocate : Y. Rama Rao, for the Appellant; T. Sunil Chowdary and Public Prosecutor, for the Respondent

Judgement

1. This petition is filed under S. 482, Cr.P.C. challenging the order passed in M.C. No. 6 of 1986 which is confirmed in Criminal Revision Petition No. 79 of 1989.

2. The present petition is filed by the husband who has been ordered to pay maintenance to his wife and minor son. The record reveals that M.C. No. 6 of 1986 filed by R. 1 and R. 2 was decided ex parte. The order portion clearly mentions that the notices sent were not returned the notices sent by registered post were returned with the endorsement that the husband-respondent refused to take the notices. The Court deemed the service as sufficient and setting the respondents ex parte as he was absent, allowed the M.C. and directed payment of maintenance of Rs. 300/- per month to the wife and Rs. 200/- per month towards maintenance and education of the second petitioner minor son. The order was challenged in revision in Criminal Revision Petition 79 of 1989. The present petitioner claimed in the revision that he was not aware of the pendency of the proceedings in M.C. No. 6 of 1986 and that he had no notice of the proceedings and the Criminal Procedure Code and that does not contemplate service of notice by registered post. A decision in Revappa Vs. Gurusanthawwa, clearly lays down that summon should be served in a maintenance proceedings

just like the summons in any other Criminal case. Section 62, Cr.P.C. applied to the summons in a maintenance petition filed under S. 125 Cr.P.C. The petitioner has come to know about the Order of maintenance passed only when he received the summons in Cr.M.P. No. 274 of 1984 filed for the execution of the maintenance order. The Court rejected the contention and dismissed the revision and confirmed the orders passed by the Magistrate. Aggrieved by the same, the present revision is filed.

3. The main contentions in this criminal petition is that the Court acting upon the refused registered notice and deeming it as service sufficient is most improper and illegal. Under the Criminal Procedure Code, every summons will have to be served in accordance with S. 62, Cr.P.C. Chapter VI of the Criminal Procedure Code does not contemplate serving of notices in proceedings under the Criminal Procedure Code by issuing notices by Registered Post. Sections 61 and 62 Cr.P.C. are very specific about this aspect. The petitioner's counsel relied upon the decision in *Revappa Vs. Gurusanthawwa*, and *Zohra Begum alias Aysha Begum Vs. Mohamed Ghouse Qadri Qadeeri and Another*, .

4. The point for consideration is whether the maintenance order passed in the present circumstances where the husband is alleged to have refused to receive summons sent by Registered Post and the service is deemed sufficient is in accordance with law and whether such an order of maintenance passed ex parte can be sustained.

5. Prior to the present Criminal Procedure Code maintenance proceedings were earlier taken under S. 488, Cr.P.C. of the old Code. Sub-s. (6) of S. 488, Cr.P.C. of the old Code clearly mentions that all evidence shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader. The proviso to sub-s. (6) of S. 488 mentions that where the Magistrate is satisfied that the husband or father is wilfully avoiding service, or wilfully neglects to attend the Court, the Magistrate may proceed to hear and determine the case ex parte. The proviso also provided for such an ex parte order being set aside when an application is made showing good cause and such an application should be filed within three months from the date of the order. Under Ss. 68 and 69 of Cr.P.C. of the Old Code, it is clearly laid down that every summons issued by a Court under this Code shall be in writing in Duplicate, signed and sealed by the presiding officer of such Court, or by such other officer as the High Court may, from time to time, by rule direct. Sub-s. (2) of S. 68, Cr.P.C. clearly laid down that such summons shall be served by a police officer, or subject to such rules as the State Government may prescribe in this behalf, by an officer of the Court issuing it or other public servant. Section 69, Cr.P.C. contemplated that the summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons and the persons served should sign a receipt on the back of the duplicate. Thus it is clear from the old Criminal Procedure Code that there is no provision for service of summons by registered post.

6. Now in the new Code Ss. 61 and 62, Cr.P.C. are almost identical of Ss. 68 and 69 of the old Code. Here also Ss. 61 and 62, Cr.P.C. do not contemplate service of summons through registered post. A reading of the provisions of the code clearly indicates that only in the case of service of summons on witnesses, service by post is contemplated. The decision in Revappa Vs. Gurusanthawwa, has categorically laid down that summons should be signed by the presiding officer and that the same should be served by a police officer as mentioned in S. 68 of the Criminal Procedure Code. In that case, the court refused to recognise service of summon sent by the Head Munsif and served by the Process server of the Court as compliance with S. 68, Cr.P.C. It is clearly mentioned at page 199 of the decision in Revappa Vs. Gurusanthawwa, that the provisions of Ss. 68 - 74 make it clear that every summons issued by a Court under the Criminal Procedure Code should be in writing, in duplicate and signed and sealed by the presiding officer of such Court, or by such officer as the High Court may, from time to time, by rule, direct and such summons will have to be served by a police officer or, subject to such rules as the State Government may prescribe in this behalf, by an officer of the Court issuing it or other public servant.

7. A thorough search of the Criminal Rules of Practice both the rules under the old Criminal Rules of Practice and the Criminal Rules of Practice issued in 1966 shows that they do not provide for service of summons in a maintenance proceedings by registered post. Naturally the procedure contemplated by Ss. 61 and 62 Cr.P.C. has necessarily to be followed. In view of this clear position of law, the present petition has necessarily to be allowed.

8. In the result, the order dated 31-7-1986 in M.C. No. 6 of 1986 is hereby set aside and M.C. 6 of 1986 is remanded to the Court of the Ist Additional Munsif Magistrate, Guruzala for fresh disposal in accordance with law. He should first issue sumons strictly in accordance with the provisions of the Code and then proceed as per law.

9. To protect the interests of the respondents 1 and 2 in this Criminal Petition, I direct the present petitioner-husband to deposit an amount of Rs. 3,000/- within one month and another amount of Rs. 2,000/- on or before first November, 1991. The amounts, when deposited, shall be withdrawn by respondents 1 and 2 on furnishing personal security. After the matter is ultimately decided, if the maintenance petition is allowed the amounts deposited and withdrawn by the respondent shall be reckoned as amounts paid towards maintenance payable. If M.C. No. 6 of 1986 ends in dismissal, then respondents 1 and 2 shall repay the amount without interest. While passing fresh orders in the M.C. the Magistrate shall pass orders remembering the fact that the respondents are entitled to maintenance from the date of filing M.C. No. 6 of 1986.

10. Order accordingly.