
(1955) 12 KL CK 0007
In the High Court Of Kerala

Johnson

APPELLANT

Vs

Sarasamma

RESPONDENT

Date of Decision : 15-12-1955

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 488

Citation : AIR 1956 Ker 204 : (1956) CriLJ 1098

Hon'ble Judges : Koshi, C.J;T.K. Joseph, J

Bench : Division Bench

Judgement

Koshi, C.J.—This reference raises the question of the legality and the propriety of an order of the Additional Special Sub-Divisional Magistrate, Trivandrum, dated 26-8-1955, in M.C. No. 27 of 1953 on his file. In the said case an award for maintenance u/s 488, Criminal P.C. was made in favour of a mother and a child. The counter-petitioner sought to have the said order set aside through a civil suit in O.S. No. 538 of 1955 on the file of the Trivandrum District Munsiff's Court.

The Munsiff issued an ad interim injunction restraining the petitioners thereto from enforcing the award made in their favour. The said order was communicated to the Sub-Divisional Magistrate. He took the view that the injunction order was null and void as the civil court had no jurisdiction to issue an injunction restraining the criminal court from enforcing its order. The plaintiff in the civil suit moved the learned Sessions Judge, Trivandrum, to quash the Sub-Divisional Magistrate's order and the learned Judge has made this reference recommending it to be quashed.

2. The learned Additional Special Sub-Divisional Magistrate bases his order on a Single Bench decision of the Calcutta High Court reported in Krishna Gobinda Chatterji Vs. Mt. Kishoribala Debi, . In that case the injunction granted was one restraining the criminal court from proceeding with an enquiry u/s 488, Cr. P.C. The injunction had nothing to do with the enforcement of the award. An award was yet to be made in that case.

It appears to us to be settled law that one court cannot restrain the proceedings pending in another Court by an injunction. No doubt, an appellate or revisional court can pass an order of stay on proper grounds. The Calcutta decision can therefore be justified on the above ground.

3. For our present purpose we need not enter into a discussion of the broad question raised by the reference whether a civil court can issue an injunction restraining the proceedings before a criminal court. In the first place, the order is directed against the petitioners in the miscellaneous case who are defendants to the civil suit.

If they felt aggrieved by the order, their remedy was to agitate it before the court that issued the injunction and if unsuccessful, to take the matter before an appellate court. The proper forum to decide the competency of the civil court was not the court of the Sub-Divisional Magistrate to whom the order was merely communicated.

Secondly, it was not proper on the part of the Sub-Divisional Magistrate to seek to sit in judgment over the civil court's action. To maintain healthy relations between the civil and criminal branches of the judiciary he should have respected the order. If in his opinion the order was not correct, he should have moved the District Magistrate so that the proper court may be moved to rectify the error, if rectification was found needed.

4. Whether the civil court can entertain a suit to declare a criminal court's order u/s 488, Cr. P.C., invalid or to set it aside is a moot question. Authorities bearing on the point are not uniform. As pointed out by the learned Sessions Judge, the Travancore High Court had held in several cases that such a suit was maintainable. In the circumstances we feel that on the authority of a Calcutta decision which appears to us to be distinguishable, the learned Sub-Divisional Magistrate ought not to have taken upon himself the task of deciding that the civil court's order was without Jurisdiction.

5. We, therefore, accept the reference and set aside the order of the Sub-Divisional Magistrate referred to above. The enforcement of the order awarding maintenance will be kept in abeyance pursuant to the temporary injunction issued by the civil court and abide the final orders of the civil court.