
(1995) 03 AP CK 0037

In the Andhra Pradesh High Court

Case No : Civ. Rev. Petition No. 896 of 1995

M. Shiv Raj

APPELLANT

Vs

The IX Metropolitan Magistrate, Hyderabad and Others

RESPONDENT

Date of Decision : 15-03-1995

Acts Referred:

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 125, 127, 397

Citation : (1995) 1 ALT 595 : (1995) 2 APLJ 125 : (1995) CriLJ 3272 : (1995) 2 DMC 1

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : T. Mohan Rao, for the Appellant;

Judgement

1. The present Civil Revision Petition is filed invoking Article 227 of the Constitution of India seeking appropriate direction.
2. Petitioner is the husband. Second respondent is the wife. Respondents 3 and 4 are claiming to be the children dependent on the petitioner.
3. Earlier in the year 1977, the second respondent wife had filed Maintenance Petition in M.C.No. 63/77 u/s 125 of Cr.P.C. on the file of the V Metropolitan Magistrate seeking maintenance for herself and for her daughter the third respondent herein. The said M.C.No. 63/77 was allowed by the V Metropolitan Magistrate Court who granted maintenance directing the petitioner herein to pay Rupees 75/- per month to the second respondent-wife and Rs. 50/- per month to the third respondent-daughter. Later, this amount seems to have been enhanced to Rs. 100/- per month in favour of the wife and Rupees 75/- per month in favour of the third respondent-daughter.
4. It is alleged that the second respondent-wife again filed another maintenance case in M.C.No. 21/90 on the file of the IX Metropolitan Magistrate notwithstanding the fact that she had already filed M.C.No. 63/77 on the file of

the V Metropolitan Magistrate and obtained maintenance. The second maintenance case M.C.No. 21/90 is stated to have been filed by the second respondent-wife and two daughters who are third and fourth respondents herein. On contest, the IX Metropolitan Magistrate granted maintenance of Rs. 200/- per month to the second respondent-wife and Rs. 150/- each per Month to two daughters who are third and fourth respondents respectively. The order passed in M.C. No. 21/90 is dated 5-7-1991.

5. It is stated by the petitioner that he contested M.C.No. 21/90 by contending before the IX Metropolitan Magistrate that the said M.C.No. 21/90 filed by the respondents 2 to 4 is not maintainable as respondents 2 and 3 had filed M.C. No. 63/77 and the Competent Court had already granted maintenance in that case. The IX Metropolitan Magistrate erroneously rejected the ground urged on behalf of the petitioner and allowed M.C.No. 21/90 granting maintenance. As against the order dated 5-7-1991 passed by the IX Metropolitan Magistrate, Hyderabad in M.C.No. 21/90, the present C.R.P. is filed invoking Article 227 of the Constitution of India.

6. The learned counsel for the Petitioner contends that as held by the Supreme Court in Bhupinder Singh Vs. Daljit Kaur, that as long as the order passed in earlier maintenance case in M.C.No. 63/77 is not varied or altered, the second Maintenance Case in M.C.No. 21/90 is not maintainable. The learned counsel for the petitioner further contends that the IX Metropolitan Magistrate failed to consider this aspect as to whether the second Maintenance Case filed by respondents 2 to 4 herein is maintainable or not, and has erroneously granted maintenance to respondents 2 to 4 herein, which would be amounting to double jeopardy.

7. I have heard the learned counsel for the petitioner at length.

8. Prima facie, the petitioner has failed to make out a case before this Court. The Criminal Procedure Code provides for presenting a revision u/s 397 of Cr.P.C. either before the High Court or Sessions Court as against the orders passed in an application filed u/s 125 of Cr.P.C. The order of the IX Metropolitan Magistrate is dated 5-7-1991. The petitioner had ample opportunity to file a revision against the said order. Petitioner, instead of filing revision, made certain attempts before the court of IX Metropolitan Magistrate by filing miscellaneous petitions which seem to have been rejected, and approached this Court invoking Article 227 of the Constitution of India.

9. This Court while disposing of C.R.P.No. 5329/94 dated 30-12-1994 considered the power of this Court for entertaining a Civil Revision Petition under Article 227 of the Constitution of India. Following a decision of the Supreme Court in Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, this Court held that the essential purpose of use of the powers vested in this Court under Article 227 is only in exceptional and grave cases to prevent miscarriage of justice. Under Article 227, High Court cannot assume the

appellate powers to correct any mistake of law. There should be a question of assumption of excessive jurisdiction or refusal to exercise jurisdiction or irregularity or illegality in procedure or breach of rule of natural justice or error apparent on the face of record. Applying the test laid down by this Court in the aforesaid decision to the present case, the petitioner has failed to satisfy any of the requirements as contemplated, before this Court for interference with the order passed by the lower Court dated 5-7-1991 which is the subject matter of this C.R.P.

10. The procedure contemplated u/s 125 of Cr.P.C. is in the nature of summary proceedings. The party who is not in a position to maintain herself/himself on being refused to be maintained, is entitled to move the Competent Court u/s 125 of Cr.P.C., seeking maintenance. An enquiry is also contemplated in this regard. At the first instance, the second respondent-wife had filed M.C.No. 63/77 seeking maintenance for her and to the third respondent-daughter only, before the V Metropolitan Magistrate, Hyderabad. The said Court granted maintenance of Rs. 75/- and Rs. 50/- per month respectively to the second respondent-wife and third respondent-first daughter and later on enhanced the same to Rs. 100/- and Rs. 75/- per month respectively. The second maintenance case in M.C.No. 21/90 filed by respondents 2 to 4 herein is for seeking maintenance to the second-respondent-wife and third and fourth respondent-daughters. The IX Metropolitan Magistrate by an order dated 5-7-1991 in M.C.No. 21/90 granted maintenance of Rs. 200/- per month to the second respondent-wife and Rs. 150/- each per month to respondents 3 and 4.

11. The provisions contemplated u/s 125, Cr.P.C. postulate that a maximum amount of Rs. 500/- could be granted towards maintenance to each petitioner on an application made in this behalf. Thus, the wife is entitled for Rs. 500/- per month and the minor dependent children are also entitled for Rs. 500/- per month towards maintenance. The submission that filing of two maintenance petitions are not permissible and if it is permitted, it would amount to double jeopardy, I am afraid, this argument is not in consonance with the requirement contemplated in the provision u/s 125 of Cr.P.C. The only embargo contemplated is a maximum amount of maintenance to each petitioner shall not exceed Rs. 500/-.

12. In the case on hand, M.C.No. 63/77 and M.C. 21/90 have been filed. As far as the first maintenance petition M.C.No. 63/77 filed by respondents 2 and 3 is concerned, the Court granted Rs. 100/- per month to the second-respondent-wife and in the other M.C.No. 21/90, an amount of Rs. 200/- is granted to her towards maintenance. So, the total amount of maintenance granted to the second respondent-wife is only Rs. 300/- per month. Likewise, the maintenance granted to the third respondent-first daughter in M.C.No. 63/77 is Rs. 75/- per month and in M.C.No. 21/90, the maintenance granted to her is Rs. 150/- per month. The total amount granted to third respondent-first daughter in these two maintenance cases being only Rs. 225/- per month. Coming to the second

daughter (who is the fourth respondent herein), she has for the first time filed M.C.No. 21/90 along with mother and elder sister. In that application, she has been granted only Rs. 150/- per month towards maintenance.

13. The Code of Criminal Procedure contemplates granting of maintenance u/s 125 of Cr.P.C. which shall not exceed Rs. 500/- per month to each petitioner. Looking at the maintenance amount granted to each of the respondents, as discussed above, is within the ceiling prescribed by the Code u/s 125 of Cr.P.C. Thus, the maintenance amount granted in two maintenance cases to respondents 2 to 4 herein is well within the ceiling limit of Rs. 500/- per month, and therefore in my view, the petitioner cannot have any grievance against the order under challenge.

14. A reading of the procedure contemplated u/s 125 of Cr.P.C. does not prohibit a party from filing any number of maintenance petitions seeking maintenance so long as the granting of amount does not exceed Rs. 500/- in favour of each of the petitioners.

15. Code of Criminal Procedure, 1973 provides for filing of an application u/s 127 seeking alteration/modification of the order passed u/s 125 of Cr.P.C. Therefore, it is open to the parties to seek appropriate modification as provided in terms of Section 127, but that provision ipso-facto is not an embargo for filing separate applications for maintenance as long as the granting of Maintenance does not exceed Rs. 500/- per month as prescribed by the Code.

16. Coming to the decision cited (1) supra referred to by the learned counsel for the petitioner, I am afraid, the decision has no application to the facts and circumstances of the case at all.

17. Having regard to the above discussion and the provisions of law u/s 125 or 127 of Cr.P.C., the petitioner failed to show sufficient grounds invoking Article 227 of the Constitution of India for this Court to interfere with the order in M.C.No. 21/90 dated 5-7-1991, more so, when there is a specific provision contemplated in this behalf u/s 397 of Cr. P.C. which enables a party to move either the Sessions Court or the High Court.

18. In this view of the matter, I do not find any merits in this Civil Revision Petition and the same is accordingly dismissed at the stage of admission itself.

19. Revision dismissed.