

(2009) 07 MAD CK 0201

In the Madras High Court

Case No : Criminal R.C. No. 1458 of 2006 and M.P. No. 1 of 2009

M. Vellai Pandi

APPELLANT

Vs

Amutha and Chitrapavai rep. by her mother and natural guardian, Amutha

RESPONDENT

Date of Decision : 01-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 127, 461

Citation : (2009) 07 MAD CK 0201

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : S. Senthilkumar, for the Appellant; K. Lavan, for the Respondent

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—Animadverting upon the order dated 12.7.2006 passed by the Family Court, Coimbatore, in M.C. No. 165 of 2004, this

criminal revision case is focussed.

2. "A" resume of facts, which are absolutely necessary and germane for the disposal of this criminal revision case would run thus:

The respondents filed the application M.C. No. 165 of 2004 u/s 125 of Cr.P.C. before the Family Court, Coimbatore, claiming maintenance.

Whereupon, the revision petitioner herein resisted the claim.

3. During enquiry, the first respondent herein examined herself as P.W.1 and no documentary evidence was adduced. The revision petitioner

herein examined himself as R.W.1 along with one Srinivasan Gupta as R.W.2 and Exs.R1 to R10 were marked.

4. Ultimately, the Family Court rejected the claim of maintenance by the first respondent herein; whereas, maintenance in favour of the minor child-

Chitrapavai was awarded in a sum of Rs. 1500/- p.m. payable by the revision petitioner herein.

5. Being aggrieved by and dis-satisfied with the said order, this revision is focussed on the main ground that the respondents were not justified in

approaching the Family Court u/s 125 of Cr.P.C., claiming maintenance in the wake of the earlier order of maintenance passed u/s 125 of Cr.P.C.

by the learned Magistrate, Srivilliputtur, awarding a sum of Rs. 500/- per month in favour of the same minor -Chitrapavai and the fact also remains

that the said Magistrate dismissed the claim of the first respondent herein.

6. The point for consideration is as to whether in the wake of the earlier order of maintenance passed by the Magistrate u/s 125 of Cr.P.C., the

subsequent M.C. No. 165 of 2004 filed by the respondents herein before the Family Court, Coimbatore, seeking maintenance is tenable.

7. A few facts, absolutely necessary and germane for the disposal of this revision, are as under.

It appears in the earlier proceedings M.C. No. 7 of 2002 filed before the Magistrate, during enquiry, the very revision petitioner herein filed a

memo agreeing to pay a sum of Rs. 500/- per month in favour of the child. Whereupon, the Magistrate passed the order and that too assuming as

though Rs. 500/- was the statutory limit, even though it was not so at that time, as the embargo in the form of ceiling was removed statutorily. The

said order of the Magistrate was passed on 26.9.2002. Whereas, M.C. No. 165 of 2004 was filed before the Family Court on 29.2.2004,

claiming maintenance as against the same revision petitioner. The Family Court also rejected the prayer of the first respondent herein, however,

awarded maintenance in a sum of Rs. 1,500/- per month in favour of the child.

8. The learned Counsel for the revision petitioner would submit that u/s 127 of Cr.P.C., the minor-Chitrapavai had the opportunity to approach the

Court seeking enhancement of maintenance from Rs. 500/- per month to a higher amount and she was not justified in filing a separate M.C. before

the Family Court.

9. At this juncture, I would like to refer to Section 461 of Cr.P.C., which contemplates the irregularities, which would vitiate proceedings and

under that Section it is found set out that if any Magistrate not being empowered in this behalf, makes an order for maintenance, the same shall be

void. But, in this case, by no stretch of imagination it could be stated that the Family Court had no power to award maintenance u/s 125 of Cr.P.C.

Hence, the proceedings undertaken by the Family Court, Coimbatore in awarding maintenance cannot be termed as void.

10. At this juncture, my mind is reminiscent and redolent of the following maxims:

1. *Res judicata pro veritate accipitur*;

2. *Nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa*;

The gist and kernal of those maxims are that once the Court adjudges the cause, subsequently, it should not be adjudged.

11. In this case undoubtedly in the earlier M.C. maintenance was awarded, perhaps on the memo filed by the very same revision petitioner herein.

Certainly, as correctly pointed out by the learned Counsel for the petitioner, the minor Chitrapavai could have filed an application u/s 127 of

Cr.P.C. seeking enhancement of maintenance, straight away. But instead of doing so, the respondents had chosen to file a separate M.C.

12. The core question arises as to in what manner the revision petitioner was prejudiced and that too, when as per Section 461(g) of Cr.P.C., the proceedings cannot be said to have been vitiated for voidness.

13. In fact, the revision petitioner had one other round of opportunity in contesting the matter and he contested also and the Family Court,

Coimbatore passed the order. Hence, in such a case, I am of the considered opinion that even though the minor-Chitrapavai could have very well

filed an application u/s 127 Cr.P.C for enhancement, either erroneously or due to misconception, filed a fresh M.C. No. 165 of 2004 and

consequently got the order, which need not be set aside on the ground that such proceedings are void in nature. Hence, in these circumstances, the

revision petition is dismissed. Consequently, connected miscellaneous petition is dismissed.