
(2002) 12 AP CK 0018
In the Andhra Pradesh High Court
Case No : Criminal R.C. No. 728 of 2001

M.A. Kareem

APPELLANT

Vs

Ahmed Ali and Others

RESPONDENT

Date of Decision : 31-12-2002

Acts Referred:

Citation : (2003) 1 ALD(Cri) 330 : (2003) 1 ALT(Cri) 323

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : P. Kamaleshwari, for the Appellant;

Judgement

L. Narasimha Reddy, J.—This revision is directed against the order of the Additional Metropolitan Sessions Judge For The Trial of Jubilee Hills Car Bomb Blast Case-Cum-Additional Family Judge, Hyderabad, in MC. No. 68 of 1998 dated 21-5-2001.

2. The case of the prosecution is briefly stated as under:

One Khaja Bee (PW-1) and respondents 1 to 3, who are minors represented through the said Khaja Bee as their natural mother, filed M.C. No. 68 of 1998 before the trial Court, alleging that the petitioner herein is the husband of PW.1 and father of respondents 1 to 3 and that he neglected to maintain them. They claimed maintenance from the petitioner herein at the rate of Rs.500/- per month for each of them.

3. The petitioner had filed counter affidavit denying the allegations made by the said Khaja Bee (PW.1) and respondents 1 to 3 herein. He asserted that PW.1 was not his wife at all and she is only the elder sister of his wife and that he is not the father of respondents 1 to 3 herein. Before the trial Court, P.Ws. 1 to 3 were examined for the petitioners therein and Exs.P1 to P4 were marked. The petitioner herein was examined as RW.1. The Trial Court recorded a finding that the said Khaja Bee is not the wife of the petitioner. However, on the ground that the petitioner did not plead or establish as to whose children respondents 1 to 3

are, has drawn an inference that they are the children of the petitioner herein and accordingly directed the petitioner to pay maintenance at the rate of Rs.300/- per month to the 1st respondent herein and Rs.250/- each to respondents 2 and 3 herein.

4. Sm. P. Kamaleshwari, learned counsel for the petitioner, submits that the order of the trial Court is full of contradictions and surmises. She submits that PW.1 had approached the Court claiming that her husband died and thereafter she married the petitioner herein and had respondents 1 to 3 through him. Once it was established that the first husband of PW.1 was very much alive, the whole case should have been rejected. She has drawn attention of this Court to certain contradictions in the order.

5. The case was listed for hearing on 27-12-2002. Since there was no representation from the counsel for respondents 1 to 3, the matter was adjourned and posted today. Since there was no representation for the respondents during the forenoon, it was passed over and even during afternoon, there is no representation. This Court is, therefore, left with no alternative except to proceed with the case on merits.

6. Before the trial Court, PW.1 pleaded that her first husband by name Khaja Miyan died and after his death, the petitioner herein, who is the husband of her younger left her younger sister and married her (PW.1). It is through the said marriage that respondents 1 to 3 are said to have been born. In her evidence, PW.1 stuck to her stand as to the death of her first husband. She has examined her brother PW.3. He has categorically stated that the 1st husband of PW.1 is in Mehbubnagar and he is very much alive. He has also denied the factum of the petitioner herein having left his wife. On appreciating of the evidence, the trial Court arrived at the conclusion that PW.1 has failed to establish that she is the wife of the petitioner.

7. Then remained the question as to whether respondents 1 to 3 are born to PW.1 through the petitioner, irrespective of the absence of marriage between them. For this, the burden lies upon the persons claiming relation through the petitioner. In his counter affidavit, the petitioner categorically denied not only his marriage with PW.1, but also any parenthood to respondents 1 to 3. That pleading was noted by the trial Court in Para 3 of the judgment, which reads as under:

"The respondent filed a counter denying all the allegations leveled against him by the petitioners. He further contends that the first petitioner is his real sister-in-law, that is the elder sister of his wife and that the first petitioner is not his wife and petitioners 2 to 4 are not his children and that the petitioners are not entitled for any maintenance and that the respondent is getting only Rs.2,333.52 after the deductions and the petition is to be dismissed."

8. No other witness spoke about the parenthood of the petitioner to respondents 1 to 3 nor any material was placed before the Court. The trial Court had drawn

an inference that since, despite his close relation with PW.1, the petitioner has not stated as to whose children respondents 1 to 3 are, they can be treated as the children of the petitioner. The same is evident from the following observation:

"When the respondent is no other than the brother-in-law of the first petitioner, he should be in a position to tell the Court as to who are the petitioners 2 to 4, but, surprisingly, in his evidence he deposed that he does not know the petitioners 2 to 4. The respondent simply deposed that they are not his children. He did not say as to whose children the petitioners 2 to 4 are. If really they are the children of the first petitioner and her first husband Md. Khaja, he should tell before the Court whether they are the children of the first petitioner and Md. Khaja or children of some other persons. The respondent knows that Md. Khaja is in Mahaboobnagar, but, he does not know as to whose children the petitioners 2 to 4 are. He did not depose in his evidence that the petitioners 2 to 4 are born to the said Md. Khaja."

9. To say the least, this is a perverted approach. The law does not place any burden on the petitioner herein to establish that respondents 1 to 3 are not his children. Further, it is not known as to how such a negative can be established at all, even if law places burden upon the petitioner.

10. Secondly, the trial Court was carried away by the fact that the petitioner did not dispute his relation with respondents 1 to 3 in the counter affidavit. In Para 11, the trial Court observed as under:

"I have gone through the counter of the respondent. In his counter the respondent simply denied the averments made in the petitioner and stated that all the said allegations are false. Having denied everything, he has not stated in crystal clear terms that the first petitioner is not his wife and that the petitioners 2 to 4 are not at all born to him through the first petitioner."

11. If Paras 3 and 11 of the judgment are read together, it discloses that the trial Court did not apply its mind to the facts of the case. Therefore, viewed from any angle, the order of the Court below cannot be sustained and the same is accordingly set aside.

12. Before concluding, it is observed that respondents 1 to 3 are minors. As on today, there is no representation before the Court from their side. This order cannot be treated as a final pronouncement as to their status vis-?-vis the petitioner herein. If, on attending majority, the respondents 1 to 3 are able to establish any right against the petitioner, this order does not come in their way.

13. The CrI.R.C., is accordingly allowed with the above observation.