
(1969) 10 KL CK 0018
In the High Court Of Kerala

N.E. Vasudevan Nair

APPELLANT

Vs

Kalyani Amma Gouri Amma and Others

RESPONDENT

Date of Decision : 08-10-1969

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 488, 489

Citation : (1970) CriLJ 1173

Hon'ble Judges : E.K. Moidu, J

Bench : Single Bench

Judgement

E.K. Moidu, J.—The petitioner, who was the husband of the 1st respondent and father of respondents 2 to 5, has come up in revision against the order of the Sub-Divisional Magistrate, Chengannur in Criminal Miscellaneous Petn, No. 862/68 which arose out of miscellaneous case No. 54/62 of the same court enhancing the maintenance to be paid by the petitioner to the respondents 2 to 5 from Rs. 22 to Rs. 50 a month.

2. The respondents filed miscellaneous case No. 54/62 in the lower court u/s 488, Criminal P. C., for maintenance alleging that the petitioner neglected to maintain them. During the pendency of that petition the marriage relationship between the petitioner and the 1st respondent was dissolved through court and the claim of respondents 2 to 5 for maintenance to be paid by the petitioner was also settled on the basis of a compromise petition put in the lower court on 7-2-63. The petitioner and the 1st respondent allowed an order to be passed by the lower court granting maintenance to respondents 2 to 5 at the rate of Rs. 5.50 each every month beginning from 7-2-63. That order has been in force since then.

3. While so, the respondents filed the criminal miscellaneous petition referred to above in miscellaneous case No. 54/62 on 5-6-6S demanding for higher rate of maintenance to respondents 2 to 5 .at the rate of Rs. 100 a month on the ground that there had been change in the circumstances of the parties. The respondents contended that at the time of the filing of the compromise petition the salary of

the petitioner as an assistant teacher was only Rs. 140 while his present salary as the Headmaster of one Lower Primary School at Kayamkulam was Rs. 278 as shown in Ext. P. 1 certificate issued by the Assistant Educational Officer, Kayamkulam. The petitioner, without disputing the quantum of his salary, contended that he had to maintain his second wife and to pay instalments of the money which he borrowed as loan from the Government as well as to contribute amount to the Provident Fund. But, the court on a consideration of the evidence in the case passed the impugned order on 23-11-68 enhancing the rate of maintenance to Rs. 50 from the original amount of Rs. 22. The sum Rs. 50 was fixed allowing Rs. 20 to the 2nd respondent and Rs. 10 each to the respondents 3 to 5.

4. The learned Counsel of the revision petitioner raises the question that once a compromise was entered into between the petitioner and the 1st respondent in respect of the maintenance claim made by respondents 2 to 5 there had been a conclusive settlement of the claim which thereafter could be agitated only through civil Court and that the lower Court exercising jurisdiction u/s 488, Criminal P. C. has no right to entertain a petition u/s 489, Criminal P. C., and afford any relief towards the claim for enhanced maintenance. As according to the learned Counsel the contention u/s 489, Criminal P. C., that there had been change in the circumstances of the parties would tantamount to an unsettling solemn contract entered into between the parties under the compromise deed. So, it is contended that the claim for enhanced maintenance is not sustainable.

5. It is admitted that the compromise petition dated 7-2-63 in the earlier proceeding was made by the petitioner and the 1st respondent jointly agreeing the petitioner to pay maintenance at the rate of Rs. 5.50, to each of the respondents 2 to 5 a month and that on the basis of that petition the Court below passed an order to that effect. Though there was an agreement in the compromise petition that the maintenance shall be paid at the rate agreed upon by them until the children attain the age of majority, no such condition was attached to the order passed by the lower Court on the same date. It is, therefore, clear that the compromise relied upon in the instant case is not connected with any other consideration or condition. The order was to pay maintenance at certain rate to the children of the petitioner.

If the compromise contains a clear term! as to the rate of maintenance and that term is independent of other terms, if any, in the compromise, then a criminal Court can very well direct the payment of the maintenance as there is no difference whether the amount of the maintenance has been fixed after taking evidence from the parties or on an agreement of the parties. It may be stated that in such cases the proper course is to refer the parties to the civil Court. But, in that case the fundamental principle underlying Section 488, Criminal P. C., will be effaced denying means of livelihood to those who are entitled to it. Hence the only possible course to be pursued in a case like this is that if the terms as to maintenance are independent of other terms of the compromise then the

criminal Court can found its order as to maintenance on a compromise and enforce it. This is the view expressed in *Dr. T. K. Thayumanavar v. Asanambal Ammal* AIR 1958 Mys 190. The observation is as follows:

Enquiry under Chap. XXXVI, Criminal P. C. is a quasi-criminal one. Admission made in the pleadings can be taken into consideration and acted upon. It is therefore within the competence of a Magistrate to accept the representations made by parties and pass an order u/s 488, Criminal P. C., giving effect to the compromise agreed between the parties as to the rate of maintenance.

This line of reasoning was in consonance with the view expressed by His Lordship Chandra Reddi, J. (as he then was) in the case of *G. D. Sundaram v. Retnavadi Ammal* 1955 A WR 441. In that decision law on the point had exhaustively been reviewed to come to the conclusion that in an application u/s 488, Criminal P. C., when parties came to an understanding as regards quantum of maintenance it only would help the Magistrate in coming to a conclusion on the question of proper maintenance to be awarded. An order of Court passed on such an agreement is valid and can be enforced. It is thus within the competence of a Magistrate to accept those representations made by parties and pass an order u/s 488, Criminal P. C., giving effect to the compromise agreed between the parties as to the rate of maintenance. I am in full agreement with the above view. In the instant case, the learned Magistrate passed an order after examining both the petitioner and the 1st respondent on the basis of the compromise. There was no other consideration which weighed with the lower Court or the compromising parties when the Court came to the conclusion as regards the rate of maintenance to be paid to the respondents 2 to 5 u/s 488, Criminal P. C.

6. While commenting upon the question of law involved in similar case *Agarwala, J.*, observed as follows in *Punn Deb Vs. Mt. Bishnuli*, :

The compromise arrived at... merely denotes that the parties agreed as to the amount that should be paid... When the compromise is arrived at the Court is not bound to give effect to it though it will usually give effect to it. After the compromise has been arrived at the Court has still to pass an order. If it passes an order in terms of the compromise, then it is that order and not the compromise that is sought to be enforced subsequently. ,...

Similar view was expressed by Mathur, J, in *Nathuram v. Smt. Ramsri* 1964 All LJ 72 : AIR 1985 All 129 holding that the compromise arrived at between the parties earlier was to be given due weight while determining the amount of maintenance payable to a party in the event of an application u/s 488, Criminal P. C. being allowed. Once a compromise is arrived at pending an application for maintenance u/s 488, Criminal P. C. and an order is passed thereupon granting maintenance to the party concerned, the basis of the order is not the terms of the compromise but the final order passed by the Magistrate fixing the rate of maintenance. Therefore, in proceedings u/s 488, Criminal P. C. if the parties arrived at a compromise as to the amount that should be allowed to the children

and the Court passed an order in terms of the compromise the criminal Court has jurisdiction to enforce its own order even though it is passed on the basis of the compromise.

7. In view of the above principles of law, I am of the opinion that the order dated 7-2-63 is a valid order passed by the lower Court though based upon a compromise and that the petitioner is not entitled to challenge its correctness on the ground that the terms of the compromise had not been adhered to. The learned Counsel of the petitioner points out that the compromise was to pay a certain rate of maintenance until the minors attain majority. That part of the condition was not accepted by the lower Court while passing the order. Even otherwise such a contention cannot be entertained as it would offend the principle contained in Section 488, Criminal P. C. Section 483 (1) does not define "child." The word is personified as "a child unable to maintain itself." That shows that the intention of the Legislature was not to restrict the claims for maintenance to minor children alone. Minority of the children is not the only circumstance to grant maintenance under the section. In this regard the following observation in Nanak Chand Vs. Chandra Kishore Aggarwal and Others, may be seen:

In Section 488 of the Criminal P. C. the word, "child" is used with reference to the father. There is no qualification of age; the only qualification is that the child must be unable to maintain itself. There is no justification for saying that this section is confined to children who are under the age of majority. In view of the reason it has to be held that the word "child" in Section 488, Criminal P. C. does not mean a minor son or a daughter and the real limitation is contained in the expression, "unable to maintain itself."

Hence the compromise entered into between the petitioner and the 1st respondent towards the claim of the minor children restricting their right of maintenance to their age of majority will offend the provisions of Section 488, Criminal P. C. and the Court will not be justified in giving effect to it. The compromise petition in its entirety cannot, therefore, be enforced against the respondents 2 to 5 who are, on the other hand, governed by the order on the strength of which maintenance was allowed to them. The proceedings under S., 488, Criminal P. C. are not in the nature of criminal proceedings. They are really civil proceedings, but dealt with summarily in a criminal Court for the purpose of speedy disposal on grounds of convenience and social order. The father of the minor children stands in a fiduciary position in relation to them as he is their natural guardian, It cannot, therefore, be seriously contended on behalf of the father that a compromise with his divorced wife is ipso facto binding on the minor children. It is the duty of the criminal Court to see as does a civil Court whether a compromise is really beneficial and advantageous to the minors and more so when the claim is for their maintenance.

Such a consideration though may not arise in the circumstance of this case as an order had been passed by the lower Court the fixing the rate of maintenance

apart from and independent of compromise. There is nothing, therefore, wrong in the lower Court making an enhancement of the maintenance rate when there are valid circumstances. It is admitted that the original claim was made on the allegation that the petitioner neglected to maintain the children and that an order was passed accordingly, Now the contention of the respondents is that there was a change in the circumstances of the petitioner. The Court below is, therefore, justified in taking into consideration those circumstances and granting enhanced maintenance. In a similar case reported in Wudali Gangamma Vs. Wudali Subbarayudu and Another, maintenance was fixed at Rs. 35/- per mensem in 1948 when husband was drawing Rs. 124/- per mensem as salary being a teacher. In 1958 husband was earning Rs. 450/- per mensem as Principal of a High School, The rate of maintenance was altered to Rs, 100/- per mensem, This is a similar case wherein the circumstances of the father have changed from the date of the original order. The Court below is therefore fully justified in giving enhanced rate of maintenance to respondents 2 to 5.

8. The learned Counsel of the petitioner did not argue that the rate of enhanced maintenance awarded in this case is excessive.

9. In the result, the petition fails and the same is dismissed.