
(1958) 09 MAD CK 0024

In the Madras High Court

Case No : Criminal Revision Case No's. 543 and 544 of 1958 and Cri. Rev. Petition No's. 513 and 514 of 1958

Parambot Thayunni Balakrishna Menon

APPELLANT

Vs

Govind Krishnan and Another

RESPONDENT

Date of Decision : 15-09-1958

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 488, 69, 72

Citation : AIR 1959 Mad 165 : (1959) CriLJ 483 : (1959) ILR (Mad) 349 : (1959) 72 LW 65

Hon'ble Judges : Somasundaram, J

Bench : Single Bench

Advocate : Public Prosecutor, S. Govind Swaminathan and K.P.S. Menon, for the Appellant; S. Chellaswami, M. Thirugnanasundaram and P.K. Ramachandran, for the Respondent

Final Decision : Allowed

Judgement

Somasundaram, J.—Crl. R. C. No. 543 of 1958 is filed against the order of the Third Presidency Magistrate passed in M. P. No. 332 of

1957, granting maintenance to the respondents at Rs. 460 per month by the petitioner herein; and Crl. R. C. No. 544 of 1958 is against the order

of the same Magistrate in M. P. No. 213 of 1958. refusing to set aside the ex parte order of maintenance passed in favour of the respondents.

2. The petitioner is in the employ of the Government of India as Charge-d' Affairs, Indian Embassy at Santiago, Chile. South America. He married

the mother of the respondents, and after giving birth to two children on whose behalf the petition for maintenance was filed, there were divorce

proceedings between the petitioner and his wire; the wife has been divorced and she has married another.

The petition for maintenance was filed in court at a time when the petitioner was serving in Bagdad as First Secretary in the Indian Embassy there.

Summons were sent out on 26-11-1957 in accordance with the provisions of Section 72, Cr. P. C., for service on the petitioner. It was received

on 1-12-1957 in the Embassy Office at Bagdad. The petitioner was then working in that office and left that office on the 18th on account of his

assignment as Charge-d' Affairs, Chile.

For some reasons or other, no attempt appears to have been made to serve the summons after the 1st and before he left the station on the 18th.

But the fact remains that summons was not served on him in accordance with the provisions of Section 69, Cr. P. C. The question under these

circumstances is whether it can be said that the petitioner has been served with summons on the petition for maintenance.

3. Section 72, Cr. P. C. clearly lays down that

Where the person summoned is in the active service of the Government or of a railway company, the court issuing the summons shall ordinarily

send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in

manner provided by Section 69 and shall return it to the court under his signature with the endorsement required by that section.

Section 69 says that

The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

Now, the return of the summons is in the following terms:

In acknowledging receipt of your letter No. R. O. M. P. 332/57 dated the 25th of November 1957, I am directed to inform you that Mr. P. T. B.

Menon has already left Baghdad for Santiago, Chile, in South America and as such the document received with your letter under reference is

returned herewith.

This is dated 18th December 1957. It is not disputed that the petitioner left the station on the 17th. As already stated, there is nothing to indicate

from this return of the summons as to why the summons could not be served personally before he left. It is not as if it was a case where it was

impracticable to serve the summons personally on the person concerned.

However, there is no reason to dispute the statement contained in the return namely that he had left the station and, therefore, the summons had not

been served. It is from this circumstance that Mr. Cnellasami appearing for the respondents contends that the petitioner must have had knowledge

of the summons having been received in the office and, he must have leu with knowledge that summons had come, without its being served on him,

and, therefore, it amounts to service and the case falls within Section 488(6), Cr. P. C. (proviso), i.e., if the Magistrate is satisfied that he is wilfully

avoiding service, or wilfully neglects to attend the court, the Magistrate may proceed to hear and determine the case ex parte.

The Magistrate, in this case, has held under the circumstances that the petitioner must have had knowledge and, therefore, he has willfully avoided

service. I entirely agree that the petitioner must nave had knowledge but what the law requires is that the summons must be served on him

personally, i.e., by delivering or tendering it to him personally.

Such knowledge as in the case may be all right in civil cases but this is a quasi-criminal case and the provision for service of summons in the

Criminal Procedure Code is laid down in Sections 69 and 72 with regard to Government servants. The principles laid down for service of

summons in civil cases cannot he applied to service of summons in criminal cases in criminal courts.

As it is clear from the endorsement of return that the summons had not been served. I must hold on the facts of the case and on the materials

placed before me that there had been no service of the summons in accordance with the provisions of Section 69 of the Code and the lower court

was not justified in proceeding ex parte, passing an order ex parte. The ex parte order is therefore, set aside. The lower court will take the petition

on its file and dispose of it according to law.

4. As this is a case involving maintenance to children of the petitioner, it seems to me that there should not be any quarrel between the husband and

the first wife over this. Mr. Govind Swaminathan appearing for the petitioner very fairly conceded that certainly the case of the children deserves

special attention and that so for as he is concerned he will persuade his client to send the maintenance allowed by the Government for these

children regularly without any failure and also any arrears, if any. It is expected that the petitioner will be sending the amount sanctioned by the

Government of India as allowance for the children regularly pending determination of the final amount by the lower court. The petitions are allowed