

(2000) 02 AP CK 0015

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 429 of 1999

Patnam Vahedullah Khan

APPELLANT

Vs

P. Ashia Khatoon and Another

RESPONDENT

Date of Decision : 14-02-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 126, 127, 128

Family Courts Act, 1984 — Section 7(2)

Muslim Women (Protection of Rights on Divorce) Act, 1986 — Section 3, 5

Citation : (2000) 1 ALD(Cri) 488 : (2000) 3 ALT 571 : (2000) 1 ALT(Cri) 410 :
(2000) CriLJ 2124 : (2000) 3 RCR(Criminal) 416

Hon'ble Judges : K.B. Siddappa, J

Bench : Single Bench

Advocate : Mirza Munawwar Ali Baig, for the Appellant; V. Subrahmanya and
Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

K.B. Siddappa, J.—This revision is filed against the order dated 19-2-1999 passed in M.C. No. 129 of 1998 on the file of the Family Court, Vijayawada.

2. The lower Court dismissed the M.C. with a direction to the husband to deposit maintenance amount of Rs. 2,075/- for Iddat Period of three months from 19-2-1998 to 18-5-1998, Rs. 1,025/- towards, Mahr amount and costs of Rs. 2,500/- were also granted to the wife under Sub-section (3) of Section 125, Cr.P.C. The said amounts were directed to be deposited within a period of one month from the date of the order.

3. The above order of the Family Court is questioned in this revision.

4. Admittedly, the respondent here is a divorced Muslim woman of the petitioner in the revision. The application was filed u/s 125, Cr.P.C. before the Family Court with the following prayer:

"Therefore, the petitioner prays the Hon"ble Court may be pleased to pass orders

directing the respondent to pay Rs. 500/- per month from the month of September, 1998 and also direct the respondent to pay future maintenance at the rate of Rs. 500/- per month in the interest of Justice and Equity".

5. As stated earlier, as against this prayer the relief mentioned above is granted.

6. The learned Counsel appearing for the petitioner-husband submitted that there was no prayer for granting most of the reliefs given by the lower Court. Therefore, the items of relief cannot be sustained.

7. In addition to that, the main contention is that the Family Court has no jurisdiction to entertain the application for grant of maintenance u/s 125, Cr.P.C. after passing of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (for short, "the Act"). Section 3 of the said Act now governs the payment of maintenance. The section starts with non-obstante clause. The Magistrate is empowered to investigate in the matter. The family Court has no jurisdiction to entertain the application.

8. For this proposition, reliance was placed on the Full Bench Judgment of this Court reported in Usman Khan Bahamani Vs. Fathimunnisa Begum and others, . In this case it was decided that the liability of husband to pay maintenance for and during the period of Iddat is limited. A divorced muslim woman cannot claim maintenance u/s 125, Cr.P.C. after passing of the Act 25 of 1986. However, the parties can exercise their option for applicability of Sections 125 - 128 of the Code of Criminal Procedure u/s 5 of the Act 25 of 1986.

9. The learned Counsel submitted that in the case on hand no such application is filed u/s 5 of the Act. Therefore, the provisions of Sections 125 - 128 Cr.P.C. are not applicable to the facts of this case.

10. The submission of the learned Counsel is well founded. The Full Bench clearly laid down that the provisions u/s 125, Cr.P.C. are not applicable unless the option was exercised by both the parties u/s 5 of the Act. Therefore, the wife resorting to Section 125, Cr.P.C. is not correct. The Family Court cannot entertain application filed u/s 125, Cr.P.C. Section 3 of the said Act clearly envisages that the Magistrate can take cognizance of such petition. Therefore, the Family Court cannot step in and assume jurisdiction, even though the Family Court has jurisdiction to entertain application under Chapter IX of Cr.P.C. by virtue of Section 7(2)(a) of the Family Courts Act, 1984 in respect of parties other than the divorced muslim woman.

11. The learned Counsel also relied upon the Bench Judgment of Kerala High Court reported in Avaran Koya Vs. Mariyam, . The Bench after distinguishing the Judgment of Bombay High Court reported in Kamal V.M. Allaudin and Vs. Raja Shaikh and etc. etc., and relying upon the Judgment of Allahabad High Court reported in Amjum Hasan Siddiqui Vs. Smt. Salma B., held "The jurisdiction of Judicial First Class Magistrate cannot in anyway be affected by establishment of Familv Court. The provision is complete in itself and does not depend on any

other enactment for its enforcement, meaning that provisions in the Act have overriding effect on all provisions contained in earlier enactments, including Family Courts Act, 1984".

12. Reliance was also placed on the Bench Judgment of Allahabad High Court referred to above in which it was clearly held that the concerned Magistrate has jurisdiction to entertain the application filed by a divorced Muslim woman claiming Mahr or dowr, and the Family Court cannot entertain such application and that Section 7 of the Family Courts Act cannot be invoked.

13. The ratio of the above judgments is quite clear. I am in respectable agreement with the interpretation given to Section 3 of the Act 25 of 1986. The Family Courts Act was an earlier enactment. If the Legislature wanted to invest jurisdiction to the Family Court they would have clearly mentioned that fact in Section 3 of the Act 25 of 1986. The Legislature purposely used the word "Magistrate". Certainly, in respect of Mahr and other properties of divorced Muslim woman, only the Magistrate can adjudicate and the Family Court has no jurisdiction.

14. In this case as earlier stated that there is no application by both the parties u/s 5 of the Act, 1986. In such a case, the provision of Section 125, Cr.P.C. is not applicable and the Family Court has no jurisdiction to pass the order impugned in this revision. Therefore, the order is set aside and the revision is allowed.

15. Mr. C. Padmanabha Reddy and Mr. Venugopal Rao learned Counsel have assisted this Court to come to the above decision. The Court acknowledges their assistance with thanks.