

(2010) 07 MAD CK 0235

In the Madras High Court

Case No : Criminal R.C. No. 412 of 2010

S. Pravitha Prasanna, R. Surutish and R. Smiruthish

APPELLANT

Vs

M. Ramasubramaniam

RESPONDENT

Date of Decision : 29-07-2010

Acts Referred:

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

Citation : (2010) 07 MAD CK 0235

Hon'ble Judges : T. Sudanthiram, J

Bench : Single Bench

Advocate : B. Raviraja, for the Appellant; T. Thiageswaran, for Waraon and Sai Rams, for the Respondent

Final Decision : Allowed

Judgement

T. Sudanthiram, J.—The revision petitioners herein are the petitioners in M.C. No. 539 of 2004, on the file of the I Additional Family Court, Chennai. The first petitioner is the wife of the respondent herein and the petitioners 2 and 3 are the minor son of the respondent herein. The first petitioner herein filed an application for claiming maintenance. The learned Judge passed an order directing the respondent herein to pay a sum of Rs. 500/- to the first petitioner and Rs. 1500/- to each of the second and third petitioner. Not satisfied with the order of the learned Judge, the petitioners had preferred this criminal revision petition.

2. The learned Counsel for the petitioner submitted that originally a suit was filed in O.S. No. 82 of 2000, before the same court claiming maintenance for the period 11.10.1999 to 10.10.2000 and a sum of Rs. 5000/- was awarded as maintenance. Another suit was filed in O.S. No. 145 of 2004 claiming maintenance for the period 11.10.2000 to 10.09.2004. Pending this suit, petition u/s 125 Cr.P.C was filed in M.C. No. 539 of 2004 on 15.09.2004 claiming maintenance from the date of the petition. The learned Judge has granted maintenance amount of Rs. 3500/- both in O.S. No. 145 of 2004 and in M.C. No. 539 of 2004, though in the year 2003, while passing order in O.S. No. 82 of

2000, a maintenance amount of Rs. 5000/- was granted. At present, only a lesser amount has been ordered by the Court.

3. The learned Counsel for the petitioners further pointed out that an appeal has also been preferred by the first petitioner in A.S. No. 409 of 2010 before this Honourable High Court against the order passed in O.S. No. 145 of 2004 since only a lesser amount of maintenance was granted.

4. The learned Counsel for the petitioner submitted that the trial Court could have fixed an enhanced maintenance amount as claimed by the petitioner. But without any proper reason, awarded only a lesser amount as maintenance.

5. The learned Counsel appearing for the respondent submitted that the reason for awarding lesser amount of maintenance is that the petitioner being employed in I.T. Job was drawing more than Rs. 20,000/- per month. Only in the said circumstances, a lesser amount was fixed as maintenance to the first petitioner. The learned Counsel also pointed out that the learned Judge has relied on the evidence recorded in the main suit O.S. No. 145 of 2004 filed by the respondent.

6. This Court considered the submissions made by the parties and perused the records. It is very surprising to this Court to see that no oral evidence was recorded in the proceedings u/s 125 Cr.P.C in M.C. No. 539 of 2004. The learned Judge observed in the order in paragraphs-6 and 7 as follows:

6. The same petitioner as well as respondent contested another O.S. No. 145 of 2004. The plaintiff in that suit filed the suit against the defendant seeking maintenance. This Court elaborately discussed all the maintainability and liability and quantum of the maintenance and delivered a judgment in that suit on the same day, i.e., today...

7. We already decided the petitioners are entitled to get maintenance from the defendant in the suit. It also applicable to the petitioner in the M.C also. Hence, the petitioners are entitled to get maintenance from the date of filing of this petition.

7. The approach made by the learned Judge is totally erroneous. The suit in O.S. No. 145 of 2004 was filed by the petitioner as plaintiff claiming maintenance only for the period up to 10.09.2004. The petition u/s 125 Cr.P.C., was filed on 15.09.2004 for maintenance from that period. It is not known under what provision the learned Magistrate considered the evidence recorded in another suit that too without recording any evidence in this proceeding. Once an application u/s 125 Cr.P.C., is filed, procedure u/s 126 Cr.P.C has to be followed. As per Section 126 Cr.P.C., "All evidence should be taken". Therefore, violating the procedure laid down u/s 126 Cr.P.C, the final order passed by the learned Judge without recording any evidence from the parties is not sustainable.

8. The Criminal Revision Petition is allowed. The impugned order passed by the learned I Additional Family Court, Chennai in M.C. No. 539 of 2004 is set aside and the matter is remitted back to the I Additional Family Court, Chennai. The

learned Judge is directed to record the evidence of both parties as per Section 126 Cr.P.C and to decide the issue afresh. The learned Judge is directed to complete the trial within a period of three months from the date of receipt of a copy of this order.