
(1995) 07 AP CK 0056

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 155 of 1993 and Criminal Revision
Petition No. 149 of 1993

Sahira Banu

APPELLANT

Vs

Shaik Basheer Ahmed and Another

RESPONDENT

Date of Decision : 26-07-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 125(1), 126, 244, 245

Citation : (1995) 3 ALD 7 : (1995) 2 ALT(Cri) 268 : (1995) 2 APLJ 253 : (1996)
1 DMC 382

Hon'ble Judges : B. Subhashan Reddy, J

Bench : Single Bench

Advocate : N. Harishesha Reddy, for the Appellant; E.S. Ramachandra Murthy, for
the Respondent No. 1 and P.P. for the Respondent No. 2, for the Respondent

Judgement

B. Subhashan Reddy, J.—This revision arises out of the proceedings initiated by the petitioner u/s 125 Cr.P.C. for maintenance against her husband i.e. the 1st respondent herein. On the ground of neglect, the petitioner instituted M.C No. 4/91 against the 1st respondent for maintenance and at an earlier point of time, the 1st respondent tried to pre-empt the said proceedings by filing quash proceedings before this Court in CrI. P. No. 1333/91, but the same was dismissed by order dated 30.1.1992 on the ground that the allegations made by him that the petitioner was divorced have got to be enquired into and that the maintenance proceedings cannot be interdicted. So saying, the petition to quash the proceedings was dismissed. In consequent of the same, enquiry had to held by the Court of the Magistrate, but the 1st response though had filed counter, had been protracting the litigation. Again, he had filed a Criminal Miscellaneous Petition No. 16/93 before the Court of Magistrate invoking the provisions contained u/s 245(1) Cr.P.C. to drop the proceedings on the ground that the petitioner was already divorced and that she is a divorced woman as defined u/s 2(a) of Muslim Women (Protection of Rights on Divorce) Act, 1986 (hereinafter referred to as the Act). The petitioner had contested the said application by filing

a counter stating that Section 245(1) Cr.P.C. is not applicable and that enquiry has to be conducted as contemplated under the provisions contained u/s 125 Cr.P.C. and other related provisions and that Criminal Miscellaneous Petition should be dismissed.

2. By order dated 19.1.1993, the Court of I Additional District Munsif, Cuddapah had acceded to the contention of the 1st respondent and held that the said Court had no jurisdiction to entertain the maintenance proceedings invited by the petitioner on the ground that she was a divorced woman under the above Act. Hence, this Revision.

3. The learned Counsel for the petitioner submits that the miscellaneous petition before the lower Court was not maintainable and that the lower Court was bound to enquire into the matter and only after fulfilled enquiry, matter could be decided. On the other hand, the learned Counsel for the 1st respondent submits that the order passed by the Magistrate is in accordance with law and that after scanning through the material placed by the 1st respondent, it was properly held that the petitioner was a divorced woman and that Section 125 Cr.P.C. proceedings were not maintainable.

4. Under Criminal Procedure Code, a separate chapter (Chapter IX) was made to deal with the maintenance cases. Even though Criminal Court had to deal with the case and the right is created under the Code of Criminal Procedure, proceedings are civil in nature Application of Section 245(1) of Cr.P.C. does not arise at all. Section 245(1) Cr.P.C. deals with the discharge of accused and reads :

"If upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him."

Section 244 Cr.P.C. contemplates the procedure to be followed by the Court of Magistrate in a warrant case instituted otherwise than on a police report under which the Magistrate has to proceed to hear the prosecution and take all such evidence, as may be produced, in support of the prosecution. Neither Section 244, nor Section 245 Cr.P.C. can be made applicable to proceedings u/s 125 Cr.P.C. Sections 244 and 245 Cr.P.C. apply to the cases tried for criminal offences and that is a general procedure applicable to all such category of cases instituted otherwise than on a police report. But, a special procedure is carved out in so far as Section 125 Cr.P.C. proceedings are concerned. It cannot be equated to a private complaint so that the theory of Sections 244 and 245 Cr.P.C. can be imported. In fact, for Section 125 Cr.P.C. proceedings, a separate and specific procedure has been formulated and provided u/s 126 of Cr.P.C. The Magistrate trying a maintenance case u/s 125 Cr.P.C. shall follow the procedure contemplated only u/s 126 Cr.P.C. and not otherwise. u/s 126 Cr.P.C. either application of Section 245(1) Cr.P.C. or even the analogy of the same cannot be pressed into service. Procedure u/s 126 Cr.P.C. will not approve any such action

by the Magistrate to drop the proceedings without taking the evidence. Sub-section (2) of Section 126 Cr.P.C. which reads :

(2) All evidence in such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases:

Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is willfully avoiding service, wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs of the opposite party as the Magistrate may think just and proper."

makes it crystal clear that evidence shall be taken when the case is instituted and there is no question of via media method to deal with the proceedings or to consider for dropping the proceedings before the evidence is taken. The evidence to be taken is both, oral and documentary and the said procedure cannot be dispensed with. In the instant case, the Court of Magistrate has adopted very strange policy of hearing the arguments advanced on behalf of the parties merely basing on some documents filed by the 1st respondent. Such a procedure is unknown to Section 125 Cr.P.C. proceedings, In fact, it is apt to state that the Magistrate has adopted short-circuit method to terminate the proceedings and in that process succumbed to the dilatory tactics of the 1st respondent to avoid the enquiry and to circumvent the orders previously passed by this Court on 30.1.1992 dismissing the quash proceedings. The 1st respondent cannot avoid the enquiry and he has to face the same. There is no option for the Magistrate, but to take the evidence both, oral and documentary, hear the arguments and pass a reasoned order on merits. As such, the procedure adopted by the Magistrate cannot be approved and consequently, the impugned order is unsustainable and is accordingly set aside. The Magistrate shall now proceed expeditiously to record the evidence, both oral and documentary to be adduced by both the parties, hear the arguments and render a well-reasoned order. It is distressing that, in this dilatory tactics, more than four years have elapsed and it is a matter of grave concern for this Court that beneficial provisions u/s 125 Cr.P.C. which were in fact, provided for a speedy remedy have been scuttled in this fashion inspite of dismissing the quash proceedings as far back as on 30.1.1992. Full 3? years have been spent again in this criminal miscellaneous petition. Hence the Court of I Addl. District Munsif, Cuddapah shall dispose of MC 4/91 within a period of four months from the date of the receipt of this order. Crl. R.C. is, thus, allowed.