

(2006) 11 KAR CK 0090
In the Karnataka High Court
Case No : RP (FC) No. 68 of 2002

Sri Mahadevanaika

APPELLANT

Vs

Shivakumar, Since Minor rep. by his mother and natural guardian Gopamma and Sri Shiva, Since Minor rep. by his mother and Natural Guardian Gopamma

RESPONDENT

Date of Decision : 10-11-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Family Courts Act, 1984 — Section 19 (4)

Citation : (2007) 1 DMC 590 : (2006) ILR (Kar) 4647 : (2007) 1 KarLJ 117

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : M.V. Hiremath Shivananda, D.S., M.D. Basavanna and R.B. Kembhavi, for the Appellant; M.R. Vanaja, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—This revision petition u/s 19(4) of the Family Courts Act, 1984, (for short the "Act") is directed against the order dated 24.4.2002 passed by the learned Judge Family Court, Mysore in Civil Miscellaneous No. 185/1998 originally numbered as 113/1998.

2. Civil Miscellaneous petition was by the wife and children of the present revision petitioner claiming a monthly maintenance of Rs. 2,000/- per month against the salary of Rs. 6,000/- per month which the revision petitioner was drawing by working as a cashier at K.E.B, Kollegal. The revision petitioner contested the claim disputing the very relationship and accordingly pleaded he is not liable to pay any amount by way of maintenance in favour of 1st petitioner therein the wife 2nd and 3rd petitioners / minor sons. The learned Judge of the Family Court who had framed as many as four points for determination, which are:

1. Whether the 1st petitioner is legally wedded wife of respondent and

petitioners 2 and 3 are his children?

2. Whether the respondent has neglected to maintain the petitioners and that the petitioners are unable to maintain themselves?

3. Whether petitioners are entitled to maintenance? and if so, at what rate?

4. To what order?

Proceeded to answer the T" point only partly in affirmative and in favour of the petitioners partly, in the sense she had not positively proved a valid marriage with the petitioner but, nevertheless on the material available proceeded to hold that the 1st petitioner and the respondent therein had lived together and the 2nd and 3rd petitioners were their children and therefore the 2nd and 3rd petitioners were entitled to claim maintenance from their father - the respondent and awarded a sum of Rs. 250/- per month to each of the two sons from the date of filing of the petition till the sons attain majority.

3. It is as against such an order, the present revision petition u/s 19(4) of the Family Courts Act, by the aggrieved husband/father.

4. Matter has been prosecuted in a very tardy manner. It had once been dismissed for non-prosecution and was restored to file on the applications filed by the petitioner. Initially this Court had granted an interim order while admitting the petition on 20.11.2002 staying the recovery of the balance of the amount if 50% of the amount awarded under the impugned order is deposited before the trial Court within a period of four weeks.

5. It is obvious that petitioner had never complied with this condition, as neither any material had been placed before this Court about such deposit nor had the petitioner asserted about the deposit having been made at any point of time during the pendency of this revision petition.

6. Be that as it may, the petition, in fact, which had been dismissed for default on 24.8.2004 and restored in terms of the order dated 4.9.2006 after condoning the delay of 426 days in filing the application for restoration etc., awarding a cost of Rs. 1,000/- in favour of the respondents for restoration, which the petitioner paid only after great persuasion, has not been prosecuted either diligently or for any bona fide purpose even thereafter.

7. The matter was heard thereafter and while learned Counsel for the petitioner pleaded that the costs of Rs. 1,000/- has also been paid, it was subsequently submitted that the petitioner was not so much concerned about the award of maintenance of Rs. 250/- per month awarded in favour of the two minor children, but he was more concerned was about the finding recorded by the Court below to the effect that the respondents are the children of the petitioner and with a view to get over this finding the petitioner and the respondents had worked out an arrangement that the petitioner would pay the amount in terms of the order impugned and would nevertheless file a joint statement indicating that

the finding by the Court below with regard to the first claimant-petitioner before the trial Court was not the legally wedded wife, which was adverse to the interest of the 1st petitioner therein and the finding that the 2nd and 3rd petitioners were the children of the revision petitioner which is adverse to the interest of the revision petitioner may both be set aside or observed to be not binding on the revision petitioner and to leave open such issue, if necessary to be agitated later and the petition can be disposed of, that the petitioner having undertaken to pay the entire amount in terms of the impugned order and for such purpose requested this Court to list the matter on 10.11.2006.

8. The order passed on 7.11.2006 reads as under:

Sri Shivanand, learned Counsel for the petitioner and Smt. Vanaja, learned Counsel for the respondents submit that the revision petition can be disposed of with the observation that the finding recorded by the learned Judge of the family court with regard to the relationship amongst the parties, that is the petitioner in Cri. Misc. No. 185/1998 namely Gopamma is not a legally wedded wife of the present revision petitioner and also that the 2nd and 3rd petitioner in the Crl. Misc. No. 185/1998 who figure as respondents in this revision petition are children of the present revision petitioner may not be binding on the parties and the recording of such finding may be set aside and it will be open to the parties to assert and prove such version as they plead in any independent proceeding that may arise or that may crop up later, but notwithstanding the present revision petitioner undertakes to keep paying the maintenance amount as had been awarded by the learned Judge of the family court in the Crl. Misc. petition during the minority of the present respondents in the present revision petition; that such an order will not only ensure payment of maintenance to the respondents but also relieve the parties of the apprehension about the finding recorded by the court below and requests the matter to be called on 10-11-2006 so that a joint memo can be filed by the parties.

List on 1011-2006 for such orders.

9. I have heard the matter further today. While Smt. Vanaja, learned Counsel appearing for the respondents, submits that the petitioner has not paid the entire arrears as had been awarded by the learned trial Judge of the Family Court, Sri. Shivanand, learned Counsel for the petitioner on instructions submits that the petitioner could not deposit the entire arrears only in view of the order of stay that has been granted by this Court earlier on 20.11.2002 that the petitioner has been depositing only 50% of the maintenance amount including arrears etc. This position is disputed by the learned Counsel for the respondents, who submits that the petitioner never deposited either the original maintenance amount or any part of it and the only amount that has been paid is Rs. 1,000/- that had been awarded as costs in the present proceedings.

10. While I find there is absolutely no merit in the revision petition, question is with regard to the legality of awarding Rs. 250/- per month for maintenance of

the minor children i.e. 2nd and 3rd petitioners therein in terms of the impugned order, that the salary being quite substantial at this point of time definitely exceeding Rs 10,000/- per month and at the relevant point of time in the year 1998 being around Rs. 6,000/- per month, petition is filed more for tormenting the respondents than with any bona fide purpose and to deprive them of even the livelihood. Petition is filed to avoid vagrancy of separated family members but dependent on the earning petitioner. It is to keep the body and soul together that an order is passed u/s 125 of Cr.P.C. The maintenance awarded under the impugned order is a meager sum in favour of the two sons and even as against such an order the petitioner has come up in revision pretending that he is more concerned about the relationship.

11. I find that the petitioner has never paid the amount in terms of the order of Court, but has used the process of this Court as a ruse to avoid payment of maintenance amount. In fact it became necessary for the respondents to take steps for execution of the order, but without much success, in view of the pendency of the revision petition and the order for maintenance could not be executed.

12. It is a rather sorry state of affairs to notice that the petitioner who is economically in a much better position is taking advantage of his better economic condition to harass and deprive the respondents of even a meager sustenance that they have derived under the impugned order.

13. I find this is a clear instance of the abuse of the process of this Court. The petition deserves to be dismissed and is dismissed with exemplary costs of Rs. 5,000/-.

14. Costs of Rs. 5,000/- awarded in favour of the respondents to be deposited along with the entire arrears of maintenance and current maintenance before the Executing Court within four weeks from today failing which a sum of Rs. 5,000/- awarded by way of costs can also be executed as an amount being in arrears of maintenance payable by the petitioner in favour of the respondents and can be so enforced before the Executing Court in terms of this very order, for the purpose of calculating the arrears of the maintenance amount.