

(1967) 06 KAR CK 0011

In the Karnataka High Court

Case No : Criminal Revision Case No. 58 of 1966

State of Mysore

APPELLANT

Vs

Nagappa and Another

RESPONDENT

Date of Decision : 13-06-1967

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438, 488, 488, 488 (3)

Citation : AIR 1968 Kar 12 : AIR 1967 Kar 214 : (1968) CriLJ 70 : (1967) ILR (Kar) 1136 : (1967) 2 MLJ 29

Hon'ble Judges : Ahmed Ali Khan, J

Bench : Single Bench

Judgement

(1) This reference is made u/s 438 of the Code of Criminal Procedure by the learned Sessions Judge, Bidar. Briefly stated, the facts are:

Gowamma who is respondent No.2 in this reference obtained an order of maintenance u/s 488 of the Code of Criminal Procedure at the rate of Rs.20/- per month of 23rd March 1964. Subsequently she filed a civil suit and obtained a decree for maintenance at the rate of Rs. 40/- per month on 30th March 1966. After the decree of the civil court an application u/s 488 (3) was made to the criminal court for enforcement of the order of maintenance at Rs.20/- per month passed by it. In that application Gowamma claimed a maintenance from February 1966 to end of April 1966.

Objection had been filed on behalf of the first respondent that the order of maintenance made u/s 488 should be cancelled u/s 489 (2) of the Code of Criminal Procedure. The Magistrate overruled the objection of Respondent No. 1. He filed a revision before the learned Sessions Judge, Bidar who has made this reference to this court with a recommendation to set aside the order under revision made by the Magistrate.

(2) It is not disputed that an order for maintenance at the rate of Rs.20/- per month had been made under S. 488 of the Code of Criminal Procedure in favour

of Gowramma had subsequently obtained a decree for maintenance at the rate of Rs. 40/- per month from the civil court of competent jurisdiction on 30th March, 1966. In view of the decree obtained by Gowramma from the Civil Court Respondent No.1 filed objections before the Magistrate and prayed for the cancellation of the order made in favour of Gowramma u/s 489 (2) of the Code of Criminal Procedure.

(3) u/s 489 (2) of the Code of Criminal Procedure, the Magistrate can vary or alter the order of maintenance if the circumstances so required. When it is brought to his notice that a decree for maintenance has been passed by the Civil Court it is the duty of the Court to consider whether that decision of the Civil Court leads to the consequence that the order passed by the criminal court u/s 488 should be canceled or varied.

There is no question of the Magistrate considering whether the decision of the civil court has altered the circumstances of the case. For the purpose of sub-section (2) of Section 489 of the Code of Criminal Procedure, the Magistrate should take the decision as it stands and consider the effect of if upon the order passed by the Criminal Court u/s 488 Cr. P. C. If the consequence is that it should be varied or cancelled, effect must be given to it by cancelling or varying the order made u/s 488, Cr. P. C. The discretion that is given u/s 489 (2) is only for this limited purpose.

(4) It is not in dispute that a decree for maintenance at Rs. 40/- per month has been obtained by Gowramma from the civil court of competent jurisdiction on 30th March 1966. therefore the criminal court should give effect to that decree and alter or vary the order made u/s 488 according to law By the order of the Criminal Court which has been made on 23rd March, 1964, maintenance at the rate of Rs. 20/- per month had been awarded to her.

The effect of the decree of the civil court is that she cannot be held entitled to any maintenance in pursuance of the order made by the criminal court u/s 488 of the Code of Criminal Procedure after 29th March 1966. She has claimed maintenance for the months of February, March and April 1966. By the order of the Criminal Court she would be entitled to maintenance till 30th March 1966. Therefore her application under S. 488 (3) can be allowed accordingly. She, however, cannot be held entitled to any maintenance in pursuance of the order of the Criminal Court for the period subsequent to 29th March 1966. Subject to the above modification the reference made by the Sessions Judge is accepted and the same is disposed of accordingly.

(5) Reference answered accordingly.