

(1997) 10 AP CK 0031

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 68 of 1997

Suraboyina Vijaya and Others

APPELLANT

Vs

Suraboyina Dharmaraju and Another

RESPONDENT

Date of Decision : 16-10-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125(2), 128

Citation : (1998) 1 ALD(Cri) 166 : (1999) 1 DMC 377

Hon'ble Judges : T. Ranga Rao, J

Bench : Single Bench

Advocate : Dhananjaya, for the Appellant; M. Krishna Mohan Rao and Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

T. Ranga Rao, J.—This revision is filed against the orders dated 20.9.1996 in Crl.M.P. No. 1137 of 1996 in M.C. No. 30/94 on the file of the IV Addl. Judicial Magistrate of First Class, Kakinada.

2. The petitioners filed a petition u/s 128, Criminal Procedure Code for implementation of orders passed in M.C. No. 30/94 stating that the Court granted maintenance to the petitioners @ Rs. 500/- to each of them directing the respondent to pay the same from the date of petition and the respondent failed to pay the same amount from 27.6.1994 to 27.3.1996 and thus the arrears accumulated to the tune of Rs. 31,500/- payable by him and thus sought for issuance of the distress warrant against the respondent for realisation of the amount.

3. But the learned Magistrate passed orders stating that the order dated 22.1.1996 granting maintenance at the rate of Rs. 500/- to each of the petitioners did not contain from which date the petitioners are entitled either from the date of the order or from the date of application and u/s 125(2), Criminal Procedure Code such maintenance allowance shall be payable from the

date of order or if so ordered from the date of application for maintenance, and hence, held that the respondent is liable to pay from the date of the order.

4. Now the petitioner filed this revision questioning correctness of the said order.

5. The learned Counsel for the petitioners submitted that though the order is silent with regard to the payment of maintenance either from the date of application or the date of order, it is a beneficial legislation and the order should be construed as if the maintenance was granted from the date of application and not from the date of order and he relied on a decision *Basant Lal Vs. State of U.P.*, .

6. But the learned Public Prosecutor submitted that if the Court intended to grant the maintenance from the date of the application, it ought to have stated specifically directing the respondent to pay the maintenance from the date of application and in the absence of any such observation, in view of Section 125(2), it must be held that the Court passed orders granting maintenance from the date of order and the impugned order is not illegal.

7. It is relevant to mention that there is no dispute that there is no specific direction in the order dated 22.1.1996 for payment of maintenance either from the date of application or from the date of order. The petitioners also did not choose to file any revision questioning the said order and requesting to modify the said order granting maintenance from the date of application, and the said order has become final. It is useful to extract Section 125(2), Criminal Procedure Code and it reads as under :

".....If any person having sufficient means neglects or refused to maintain,

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) xxx xxx xxx (d) xxx xxx xxx a Magistrate of the First Class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit and to pay the same to such person as the Magistrate from time to time direct;

Provided xxxxx

(2) Such allowance shall be payable from the date of the order, or if so, ordered from the date of the application for maintenance."

8. Thus it is clear from the plain reading of the above provision of law that the Courts normally should pass order to pay the maintenance from the date of order, if not from the date of application for the maintenance. Therefore, in the absence of any such specific direction to pay maintenance either from the date of order or from the date of application, it should be construed that the payment of

maintenance is only from the date of order in view of Section 125(2), Criminal Procedure Code. If the Court intended to pass an order for payment of maintenance from the date of application, it should have stated so in the order.

9. The facts leading to the decision in Basant Lal's case, referred to above, are that the Court passed orders granting maintenance from the date of application, without assigning reasons. Then the husband, filed a revision contending that the impugned order is unsustainable as no reasons are assigned for granting maintenance from the date of application. In such circumstances, the Allahabad High Court considered the scope of Sub-section (2) of Section 125, Criminal Procedure Code and observed that the claimant cannot be made to suffer for any act or omission on the part of any Court or any Authority without any fault on the part of the claimant and held that Sub-section (2) of Section 125, Criminal Procedure Code is ultra vires to Article 14 of the Constitution of India and cannot be pleaded as a ground to challenge the validity of the order of maintenance directing its payment from the date of the application. Thus the Allahabad High Court upheld the payment of maintenance from the date of application though reasons are not assigned for granting the same, and hence, the facts leading to the above decision are different to the facts of the case on hand and not much helpful to the petitioner. But in the present case, there is no direction for payment of the maintenance from the date of application. The learned Magistrate taking into consideration Subsection (2) of Section 125, Criminal Procedure Code rightly held that it must be construed that the payment of maintenance was ordered from the date of the order inasmuch as no one can import something which is not found in the order. If really, the learned Magistrate was intended to grant maintenance from the date of application, he ought to have specifically stated the same in the order. As already observed, the petitioners allowed the order to become final. Therefore, when there is no direction to pay the maintenance from the date of application and as the said order has become final, and also in the light of foregoing discussion, it is difficult to construe that the Court intended to direct the respondent to pay the maintenance from the date of application. Therefore, on considering the material on record, I do not find any illegality in the order of the learned Magistrate. There is no merit in the revision.

In the result, the revision fails and is dismissed.