

(1999) 10 AP CK 0013

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 2875 of 1999

Vemulapalli Rajanikumari

APPELLANT

Vs

Vemulapalli Sarath Babu and Another

RESPONDENT

Date of Decision : 06-10-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 397, 482

Citation : (1999) 2 ALD(Cri) 850 : (2000) 1 ALT(Cri) 275 : (2000) 1 APLJ 231 : (2000) 2 CivCC 404 : (2000) 2 DMC 199 : (2000) 2 RCR(Criminal) 631

Hon'ble Judges : Vaman Rao, J

Bench : Single Bench

Advocate : Public Prosecutor, V.S.R. Anjaneyulu, for the Appellant; Ravindra Babu, for the Respondent

Final Decision : Allowed

Judgement

Vaman Rao, J.—In this petition u/s 482 of Cr.P.C., the orders of the learned I Addl. Sessions Judge, Guntur dated 3.3.1999 passed in CrI.R.P. No. 160 of 1996 and the orders of the learned II Addl. Munsif Magistrate, Tenali dated 24.8.1999 passed in M.C. No. 42 of 1994 are sought to be quashed.

2. The petitioner herein is the wife of respondent No. 1. She filed the said MC 42 of 1994 for maintenance. Her petition was dismissed. It was held on the question whether the petitioner has proved that the respondent No. 1 husband had neglected to maintain her, that the wife and husband neglected each other. It is difficult to appreciate this conclusion of the learned Magistrate.

3. The question that falls for consideration in petition u/s 125 of Cr.P.C. is whether the husband had refused or neglected to maintain his wife? The finding that the husband and wife neglected each other does not answer the question which is required to be decided by the learned Magistrate. At any rate, it may imply that the finding that the husband neglected the petitioner. However, the finding given by the learned Magistrate does not appear to answer the question

required to be decided by him and has been left vague.

4. The other ground on which the learned Magistrate rejected the plea of the wife for granting maintenance is that her father who has been examined as P.W. 2 owned Ac. 3.40 cents of land which was under his cultivation and that the petitioner being a married daughter will be entitled to co-parcenary rights in the said land.

5. The learned Counsel for the petitioner contends that it is quite uncertain whether the petitioner would in fact receive any share in the property, and rejection of the claim for maintenance on that ground is wholly unjustified.

6. The learned Counsel for the respondent No. 1 contends that this petition purported to have been filed u/s 482 of Cr.P.C. for quashing the proceeding is in fact a second revision petition filed by the petitioner u/s 397 of Cr.P.C. and that inasmuch as a second revision petition does not lie, this petition under the garb of proceeding for quashing the orders of the learned Magistrate cannot be entertained.

7. In support of his contention, the learned Counsel for the respondent No. 1 placed reliance on the judgment of the Supreme Court in the case of Dharampal and others Vs. Smt. Ramshri and others, . It is true that in this case, the Supreme Court has held that Section 397(3) of Cr.P.C. bars the second revision by the same party and that inherent powers u/s 482 of Cr.P.C. cannot be utilised for exercising the powers which are expressly barred by the Code of Criminal Procedure.

8. In fairness, the learned Counsel for the 1st respondent has also invited my attention to another judgment of the Supreme Court in the case of Jitender Kumar Jain Vs. State of Delhi and Others, . It has been held in this case that it was necessary to distinguish the powers of the High Court between Section 397(3) of the Cr.P.C. and Section 482 of the Cr.P.C. The Supreme Court in Jitender Kumar Jain's case (supra) observed that while it was true that a second revision petition cannot be filed before the High Court where one was dismissed by the Court of Session, still the Court of Session being a Court subordinate to the High Court, its proceedings are open to scrutiny in exercise of powers u/s 482 of Cr.P.C.

9. One of the grounds on which the powers u/s 482 of Cr.P.C. can be invoked by this Court is whether it is necessary to do so far securing the ends of justice. In this case, a woman has claimed maintenance from her husband on the ground that he had neglected to maintain her. The facts of the case disclose that the learned Magistrate rejected the claim of maintenance on wholly untenable grounds. The learned Magistrate as observed above has refused to grant maintenance on the ground that the petitioner being a married daughter was likely to get a share in the properties held by her father. The properties themselves appear to be very meagre measuring Ac. 3.40 cents of land. No evidence was adduced before the learned Magistrate except the statement of

P.W.2 her father, that he was having some land. Mere possession of land by her father does not mean that the daughter by virtue of a right for share in the property can be presumed to have sufficient means to maintain herself.

10. The question for consideration before the learned Magistrate was whether as on the date of the petition, the petitioner-wife had means to maintain herself ? A mere existence of a share in some property and the contingency of securing that is not conclusive of the question whether she had means to maintain herself. Where right of maintenance to a woman is denied on untenable grounds, quashing such an order can be considered the object of securing the ends of justice within the meaning of Section 482 of Cr.P.C.

11. In view of the above observations, the orders of the learned Sessions Judge in CrI.R.P. No. 160/96 dated 3.3.1996 and the orders of the learned Magistrate dated 24.8.1996 in M.C. No. 42 of 1994 are quashed and the matter is remitted back to the learned Magistrate for fresh disposal.

12. It will be open to the parties to adduce such evidence as they are advised before the concerned Magistrate Court and the learned Magistrate shall pass orders in the light of the observations made in the above paras. However, the observations made in this case are not meant to be indicative of findings of fact by this Court. It is open to the learned Magistrate to arrive at the findings on fact on the basis of material placed before him.

13. The Magistrate shall complete the enquiry in the matter expeditiously, at any rate within a period of four months from the date of receipt of a copy of this order.