
(1992) 10 AP CK 0002
In the Andhra Pradesh High Court
Case No : Criminal R. No. 433 of 1991

Vijaya Laxmi and Another

APPELLANT

Vs

A. Janardhan and State of A.P.

RESPONDENT

Date of Decision : 01-10-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (1993) 1 ALT 187 : (1993) 2 CivCC 220 : (1993) 1 DMC 521

Hon'ble Judges : G. Radhakrishna Rao, J

Bench : Single Bench

Advocate : C. Malla Reddy and G. Anandam, for the Appellant; M. Subba Reddy and V. Malik for the Respondent No. 1 and P.P., for the Respondent

Final Decision : Allowed

Judgement

G. Radhakrishna Rao, J.—This criminal revision petition is filed by the petitioners challenging the order dt. 3-3-1991 passed by the X Metropolitan Magistrate, Secunderabad in M.C. No. 19 of 1989 on his file dismissing the same.

The petitioners filed the above M.C. claiming maintenance against the 1st respondent on the ground that the 1st respondent and his family members have been harassing the first petitioner constantly extending threats of dire consequences.

2. It may be noted that the reasoning given by the learned Magistrate for dismissing the M.C. is, ex-facio, perverse and is liable to be set aside. It is the duty of the Magistrate to decide on merits as to the grounds alleged by the petitioners are true and whether the petitioners have made out a case for maintenance and if he comes to the conclusion that the petitioners are entitled to maintenance, then he has to decide on the basis of evidence as to how much quantum of the maintenance the wife and daughter are entitled to and he must deduct the amount if any granted by the Civil Court so that she may take execution proceedings for the remaining amount. But, without doing the same,

the lower Court simply passed the following order :

"That the respondent herein has filed a certified copy of order in LA. 34/89 in O.P. No. 350/88 on the file of IV Addl. Judge, Hyderabad wherein the learned Judge has ordered the respondent to pay a sum of Rs. 300/- to the petitioners and also legal expenses for Rs. 1,000/- till the disposal of O.P. which is marked as Ex. P-I. In view of the said order the present petition is dismissed with costs."

3. The order of this nature cannot be allowed to stand. The validity of the order passed in an interlocutory application filed in the Original Petition will be valid only till the disposal of the main O.P. and it will abide the result of the main O.P. Under these circumstances the impugned order passed by the lower Court is set aside and the matter remanded back to the lower Court with a direction to dispose of the same afresh after giving opportunity to both parties to adduce evidence. The Criminal Revision Case is accordingly allowed.