
(1977) 08 KL CK 0006

High Court Of Kerala

Case No: Criminal M.P. No. 1027 of 1976

T.V. Kannan

APPELLANT

Vs

Karthyayani

RESPONDENT

Date of Decision: Aug. 18, 1977

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 113, 125(4), 397, 397(2), 397(3)

Hon'ble Judges: Kader, J

Bench: Single Bench

Advocate: M. Ratna Singh and P. Kuruvilla Jacob, for the Appellant; V.M. Nayanar, K. Raveendran and R. Krishnan Nair, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Kader, J.

The Petitioner invokes the inherent powers of this Court u/s 482 of the Code of Criminal Procedure and seeks to set aside an order in M.C. No. 124 of 1975 passed u/s 113 of the Code of Criminal Procedure by the Sub Divisional Magistrate, Hosdurg, awarding maintenance to the Respondent, the divorced wife of the Petitioner and confirmed in revision by the Court of Session, Tellicherry. The marriage between the Petitioner and the Respondent, who are governed by the Madras Marumakkathayam Act was dissolved by mutual consent under a registered document Ext. D-1, dated 3rd June 1972, about a year prior to the commencement of the Code of Criminal Procedure, 1973 (hereinafter called the New Code). The main contention raised by the Petitioner before the Sub Divisional Judicial Magistrate resisting the application for maintenance was that the Petitioner and the Respondent are living separate by mutual consent and therefore, by virtue of Clause (3) of Sub-section (4) of Section 125 of the New Code the Respondent is not entitled to maintenance. What is referred to above as Clause (3) or the third category mentioned in the sub-section is to the effect that if husband and wife are living separately by mutual

consent, wife shall not be entitled to maintenance. The contention was negatived and maintenance was awarded. Both the courts below rejected the contention holding that Clause (3) of Sub-section (4) of Section 125 has no application to the case of a divorced wife. The same contention is reiterated before this Court in support of the petition.

2. The counsel appearing for the Respondent contended that the application is not maintainable in law and on the facts, that this petition is filed with a view to circumvent the provisions expressly barring a second revision in Sections 397(3) and 399(3) of the New Code, that there is no abuse of any process of law or want of jurisdiction in this case and that on the other hand, the Petitioner is abusing the process of court by filling a petition of this nature.

3. The counsel for the Petitioner contended that there is no other remedy left open to him except to approach this Court u/s 482 of the New Code, that this petition is maintainable and that it is a fit case where this Court can exercise its inherent powers.

4. Section 482 of the New Code reads:

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

Section 482 of the New Code corresponds with Section 561A of the Old Code and is a verbatim reproduction of Section 561A of the Old Code. But under the New Code there has been certain material and adequate changes made and certain new provisions also have been added. The section only preserves the inherent powers of this Court without conferring any additional powers. The inherent powers of the High Court are very wide and indefinable and therefore it is necessary that the limits of such powers should be carefully guarded and such powers are to be exercised only in exceptional and extra-ordinary cases. The section limits the exercise of the inherent powers to three categories of cases mentioned therein, namely, (1) to give effect to any order under the Code, (2) to prevent abuse of the process of any court and (3) otherwise to secure the ends of justice. The counsel appearing for the Petitioner submitted that, although this petition does not come under categories 1 and 2, it does come under the third category. Narayana Pillai, J. in *Assan Haji v. Sub Inspector of Police* 1977 KLT 76 while construing the provisions of Section 482 held that orders to be passed under categories 1 to 3 have all a common quality which constitute them a genus, that cases coming under category (3) are particular unspecified cases coming under that genus, that the language of the section must be construed ejusdem generis and that therefore for invoking the power u/s 482 of the New Code it is not sufficient if it is merely shown that it is for securing the ends of justice, but it has to be shown further that it is for giving effect to any order passed under the Code or for preventing abuse of the process of court or for a purpose analogous to them. With respect, as rightly pointed out in that case, an order to be

passed u/s 482 should be to secure the ends of justice and that does not mean that to secure the ends of justice any order can be passed under the section. The scope and nature of the inherent powers of the High Court u/s 561A of the Old Code corresponding to Section 482 of the New Code have come up for consideration before the Supreme Court in a series of cases. [R.P. Kapur Vs. The State of Punjab](#), the Supreme Court has held that the inherent power of High Court u/s 561A of the Old Code cannot be exercised in regard to matters specifically covered by the other provisions of the Code. Some of the categories of cases where the inherent jurisdiction can and should be exercised for quashing proceedings were indicated in the said decision. It was observed that it was not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. In exercising the inherent powers u/s 482 of the New Code, the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. There is no scope for appreciation of evidence in this regard which is the function ordinarily of a trial court or an appellate court. In the New Code, there is a new provision u/s 397(3) which clearly prohibits a second revision application by the same person if he had already made an application under the section either to the High Court or to the Sessions Court. u/s 399(3) of the New Code, it has been made clear that where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other court. The provisions in both these sub-sections are mandatory in nature. Parties cannot be permitted to circumvent what is prohibited under these sub-sections by resorting to Section 482 of the New Code. It may also be noted that the provision u/s 397(2) of the New Code is also mandatory in nature which clearly bars exercise of revisional powers in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding. An increasing tendency is noticed nowadays to escape and evade these salutary provisions in the New Code by having recourse to Section 482. What is expressly prohibited under the Code cannot be achieved by Section 482 of the Code. Even under the Old Code the High Court will not ordinarily interfere at an interlocutory stage of a criminal proceeding pending in a subordinate court, unless there was any exceptional or extraordinary reason for doing so. The bar u/s 397(2) of the New Code cannot be got over by invoking the power u/s 482. In *Biswanath v. State* 1976 CrL. L.J. 1901 a Division Bench of the Calcutta High Court while considering whether an interlocutory order u/s 397(2) of the New Code can be set aside u/s 482 dealt with the scope and use of the powers u/s 482. In this decision, reference has been made to a number of leading cases of the Supreme Court on the point. No doubt in appropriate cases the powers can be exercised to prevent abuse of the process of court or to secure the ends of justice. In the case cited it was observed:

Section 397(2) is a bar which apparently fetters the provisional powers of the court only. There is nothing in Section 482, Code of Criminal Procedure. that it is to be read subject to Section 397(2). But even then should the court, when it is unable to exercise its revisional powers in case of interlocutory orders, take recourse to its inherent powers in

that field Indiscriminate or frequent use of the inherent powers in that fashion would obviously render nugatory the bar put by Section 397(2). It would be doing indirectly what the court is directly forbidden to do u/s 397(2).

In *Rajanikanta Maheta v. State of Orissa* 1976 CrL. L.J. 1674 a Division Bench consisting of the Chief Justice of the Orissa High Court held that the inherent powers cannot be invoked to do what the law on the subject otherwise expressly prohibits. Inherent power is not intended to be exercised for the purpose of doing something which would be in conflict with any of the express provisions of the law as it would defeat the intention of the legislature and therefore, Section 482 cannot be invoked to interfere with an interlocutory order passed within the jurisdiction in view of the ban imposed by Section 397(2) of the New Code.

5. Unless it is shown that the views taken by the courts below are manifestly illegal or the decision is one without jurisdiction or so absurd or so shocking to the judicial conscience, it may not be proper to interfere with an order as the one impugned in this case, in exercise of the inherent powers vested u/s 482. The purpose of the new provisions u/s 397(3) and Section 399(3) of the New Code is to avoid protracted proceedings in criminal cases and with a view to ensure finality to the orders. The express bar contained in these provisions cannot be obviated by styling the application as Criminal Miscellaneous Petition u/s 482 of the New Code. The powers under this section cannot be invoked in a case which would conflict with any specific provisions of the Code. (See *Deena Math v. Daitari Charan*: 1975 CrL. L.J. 1931 and *Dassu v. Manitra*: 1976 CrL. L.J. 1221).

6. The provision in Clause (3) of Sub-section (4) of Section 125 are clear that it applies only to cases of subsisting marriage and not to the case of a divorced wife. It is ridiculous for a husband who has divorced his wife by mutual consent to come forward with a plea in an action for maintenance by the divorced wife that she is living separate by mutual consent and therefore only if she comes and resides with him she will be entitled to maintenance and that so long as she is living separate she is not entitled to get maintenance. There is no manifest illegality or patent in justice or abuse of any process of court or any absurdity in the orders of the courts below. This petition, on the facts and in the circumstances, virtually in effect is a second revision and is one filed with a view to circumvent the express prohibitions in this regard in Sections 397 and 399 of the New Code. This petition is therefore not maintainable in law and on merits and the same is hereby dismissed.