

(1997) 08 KL CK 0036

High Court Of Kerala

Case No: C.R. No"s. 1217 and 1262 of 1997

Satyabhama

APPELLANT

Vs

Rama Chandran

RESPONDENT

Date of Decision: Aug. 28, 1997

Acts Referred:

- Family Courts Act, 1984 - Section 19(4), 7(2)

Citation: (1998) 1 DMC 148 : (1997) 3 ILR (Ker) 659 : (1997) 4 RCR(Civil) 343 : (1997) 4 RCR(Criminal) 428

Hon'ble Judges: T.V. Ramakrishnan, J; P.V. Narayanan Nambiar, J; N. Dhinakar, J

Bench: Full Bench

Final Decision: Allowed

Judgement

T.V. Ramakrishnan, J.

On the basis of the arguments advanced before us/ the points arising for decision by the Full Bench are the following :

(1) Whether a revision petition filed u/s 19(4) of the Family Courts Act, 1984 (for short "the Act") is liable to be treated and numbered as a civil revision petition or a criminal revision petition ? and

(2) Whether the Family Court Act as a Civil Court or as Criminal Court while disposing of applications filed u/s 125 of the Criminal Procedure Code in exercise of its jurisdiction u/s 7(2) of the Act ?

2. As regards the first question/ a Division Bench of this Court as per its order dated 10.7.1997 has held that a petition filed u/s 19(4) of the Act is liable to be treated and numbered as a CRP. The difference may not be of much practical importance as far as the scope of the revisional jurisdiction is concerned since the same has been delineated in Section 19(4) of the Act. But, as regards the second point, the Division Bench has not expressly considered the same. However, the Bench has apparently

proceeded on the basis that even while exercising jurisdiction u/s 7(2)(a) of the Act and passing orders in application filed u/s 125, Cr.P.C., the Family Court act as a Civil Court. The Bench which referred the matter has doubted the correctness of the above view taken by the Division Bench.

3. Before proceeding to consider the points we may refer to some of the important provisions in the Act with reference to which the points may have to be decided. Family Court has been defined u/s 2(d) to mean a Court established u/s 3 of the Act. Section 3 of the Act states that for the purpose of exercising the jurisdiction and powers conferred on a Family Court by the Act. The State Government after consultation with the High Court and by notification shall establish for every area in the State comprising a city or town whose population exceeds one million a Family Court. State may also establish Family Courts for such other areas in the States as it may deem necessary. Section 2(e) is to the effect that "all other words and expressions used but not defined in the Act and defined in the Code of Civil Procedure, 1908 shall have the meaning respectively assigned to them in that Code". Section 7 is the provision which defines or confers the jurisdiction on the Family Court. It is thus :

"7. Jurisdiction-(1) Subject to the other provision of this Act, a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by any District Court or any subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and

(b) Be deemed, for the purpose of exercising such jurisdiction under such law, to be a District Court or, as the case may be, such subordinate Civil Court for the area to which the jurisdiction of the Family Court extends.

Explanation-The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:

(a) a suit or proceeding between the parties to marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to marriage with respect to the property of the parties of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) subject to the other provisions of this Act, a Family Court shall also have and exercise-

(a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment."

Section 8 excludes the jurisdiction of all other Courts to deal with all such matters in respect of which jurisdiction has been conferred on the Family Court under the Act. It also provides that every suit or proceeding of the nature referred to in Section 7 will stand transferred to the Family Court wherever a Family Court is established. Section 10 prescribes the procedure to be followed by the Family Courts. It is thus:

"10. Procedure generally-(1) Subject to the other provisions of this Act and the rules the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law or the time being in force shall apply to the suits and proceedings (other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before a Family Court and for the purpose of the said provisions of the Code, a Family Court shall be deemed to be a Civil Court and shall have all the powers of such Court.

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

(3) Omitted."

Section 18 deals with the execution of decrees and orders passed by the Family Court. A decree or order other than an order under Chapter IX of the Cr.P.C. passed by a Family Court shall have the same force and effect as a decree or order of a Civil Court and shall be executed in the same manner as is prescribed by the CPC for the execution of decrees and orders. Section 18(2) specifically provides that an order passed by a Family Court under Chapter IX of the Cr.P.C. shall be executed in the manner prescribed for the execution of such order by that Code, namely Cr.P.C. Section 18(3) further provides that a decree or order may be executed in the manner prescribed for the execution of such order by executed either by the Family Court which passed it or by the other Family Court or ordinary Civil Court to which it is sent of execution. Section 19 as it stands now after amendment provides for appeals and revisions. But before amendment it provided only an appeal against all orders except interim orders passed by the Family Court irrespective of the nature of the jurisdiction exercised and the nature of the proceedings dealt with. However, as per the amendment, orders passed under Chapter IX of the Cr.P.C. were excluded from

the purview of appealable orders and were made revisable by me High Court as per the newly incorporated provision contained in Sub-section (4) of Section 19. The said provision is thus :

"19(4). The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situated within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and as to the regularity of such proceeding."

It is relevant to note here itself that the wording of Sub-section (4) is identically similar to the wording of Section 397 of the Cr.P.C. Sub-section (5) of Section 19 states that except as provided in Section 19, no appeal or revision shall lie to any Court from any judgment, order or decree of a Family Court. Sub-section (6) specifically provides that an appeal preferred under Sub-section (1) shall be heard by a Bench consisting of two or more Judges.

4. Rule 3 of the Family Courts (Kerala) Rules, 1989 (hereinafter referred to as the "Rules") provides that all proceedings instituted before the Family Court shall by way of petition, however, in respect of applications under Chapter IX of the Cr.P.C., the summons to appear and answer shall be in Form No. I in the Appendix with such variations as the circumstances of the case may require.

5. The above provisions would go to show that Family Court is Court established u/s 3 of the Act conferring jurisdictions of different nature as indicated in Section 7. As per Section 7(1) Family Court is conferred with jurisdiction exercisable by the District Courts and subordinate Civil Courts under any law for the time being in force in respect of suits and proceedings enumerated in the Explanation to Section 7(1) of the Act. Such matters are expressly directed to be tried and disposed of in accordance with the provisions contained in the CPC subject to the other provisions of the Act as per Section 10(1) of the Act. By the deeming provision contained in Section 7(1) of the Act, the Family Court while exercising jurisdiction in respect of suits and proceedings enumerated in the Explanation to Section 7(1) of the Act is to be deemed as a District Court as the case may be a subordinate Civil Court which expression would take in a Sub-Court or as and a Munsiff Court also. As per the deeming provision contained in Section 19(1) of the Act again it is stated that the Family Courts shall be deemed to be a Civil Court for the purpose of the provisions of the CPC, while dealing with the matters enumerated in Section 7(1) and the Explanation attached to it. The second kind of jurisdiction is the one conferred u/s 7(2)(a) of the Act, namely, the jurisdiction exercised by a Magistrate under Chapter IX of the Cr.P.C. while exercising such jurisdiction, the provisions of the Cr.P.C. or the Rule made thereunder would alone apply as per Section 10(2) of the Act subject to the other provisions of the Act. It is relevant to note that as regards the jurisdiction conferred u/s 7(2)(a), there is no deeming provision similar to the one contained in

Section 7(1) of the Act, possibly because the jurisdiction conferred is only that of the Magistrate, Criminal Court as per Section 6 of the Cr.P.C. Unlike u/s 7(1) where jurisdiction of several Civil Courts are conferred on the Family Court. Section 7(2)(b) indicates the third kind of jurisdiction of the Family Court. The said provision provides that Family Court may have other jurisdiction conferred by any other enactment also. Section 19 as it now stands after the amendment in 1991, confers a right of appeal against all orders of the Family Court passed in exercise of the power conferred u/s 7 of the High Court excluding orders passed u/s 7(2) in proceedings under Chapter IX of the Cr.P.C. to be decided by a Bench consisting of two Judges. As against the excluded orders only a revision as provided in Section 19(4) is allowed.

6. The above analysis of these relevant provisions of the Act would clearly show that Family Court is a Court established with jurisdiction of different nature, jurisdiction exercisable by the District Court and other Subordinate Civil Courts to be exercised in accordance with CPC and jurisdiction exercisable by the Magistrate-a Criminal Court as per Section 6 of the Cr.P.C. under Chapter IX s if the Cr.P.C. in accordance with the provisions of that Code. A clear distinction has been made through out the provisions of the Act between these two kinds of jurisdiction conferred by the Act on the Family Court separately under Sections 7(1) and 7(2) of the Act. For, we find that suits or proceedings enumerated in the Explanation are all of civil nature and are directed to be disclosed of in accordance with the provisions of the CPC. There is a specific deeming provision which states that while exercising the jurisdiction u/s 7(1), the Family Court shall be deemed to be a District Court or as the case may be a subordinate Civil Court depending upon the nature of the suits or proceedings before it. There is also a further deeming provision in Section 10(1) which states that while exercising jurisdiction u/s 7(1) Family Court shall be deemed to be a Civil Court" for the purpose of the provision of the Code and shall have all the powers of such Court. The restricted deeming provisions in our view would clearly indicate that Family Court can be deemed to be a Civil Court only while exercising the jurisdiction conferred on it u/s 7(1), and disposing of suits or proceedings enumerated in the Explanation to Section 7(1), in accordance with the provision in the CPC. As a corollary we think, it must follow that while exercising jurisdiction u/s 7(2)(b) being one exercisable by a Magistrate who is a "Criminal Court" as per Section 6 of the Cr.P.C. and in accordance with Cr.P.C.; we find every justification to accept the contention that while exercising jurisdiction conferred u/s 7(2)(a), the Family Court acts as a Criminal Court and not as a "Civil Court".

7. We may now proceed to deal with the submissions made by the learned Counsel for the petitioners, Mr. P.N. Ravindran, Vijayabhanu, Sunny Mathew and the amicus curiae Mr. Dinesh Shenoy and the reasons which persuaded us to take the above view. Incidentally we may note that Mr. P.N. Ravindran appearing for the petitioners in C.R.P. 1217 of 1997 alone has contended for the position that it is liable to be treated and numbered as a Civil Revision Petition. u/s 7(2)(a) of the Act the

jurisdiction expressly conferred is one exercisable by Magistrates under Chapter IX, Cr.P.C. It was strongly submitted by Mr. P.N. Ravindran that the proceedings under Chapter IX, Cr.P.C. have been held to be of a civil nature, by the Supreme Court and this Court in a Full Bench decision and as such there may not be any justification to hold either that the jurisdiction conferred u/s 7(2)(a) of the Act is criminal or that the proceedings under Chapter IX, Cr.P.C. of a criminal nature. The learned Counsel has referred to the decisions reported in [Nandlal Misra Vs. K.L. Misra](#), and Balan Nair v. Valsamma, 1986 KLT 1378, in support of his submissions. It was further submitted that Legislature must be deemed to have taken note of the judicial view taken about the nature of the proceedings under Chapter IX, Cr.P.C. and as such it may not be proper or legal to hold that the jurisdiction conferred is criminal in nature or that Legislature has intended the Family Court to function as a Criminal Court while exercising jurisdiction u/s 7(2)(a) of the Act merely because jurisdiction conferred is stated to be one exercisable by Magistrate under Chapter IX, Cr.P.C. or that the proceedings are to be dealt with in accordance with the provisions in the Cr.P.C.

8. It is difficult to accept the above submissions. In [S.A.L. Narayan Row and Another Vs. Ishwarlal Bhagwandas and Another](#), the Supreme Court has defined the two expressions "Civil Proceedings" and "Criminal Proceedings bringing out clearly the essential distinction between the two, relevant passage is thus :

"....The expression "civil proceedings is not defined in the Constitution, nor in the General Clauses Act. The expression in our judgment covers all proceedings in which a party asserts the existence of a civil right conferred by the civil law or by status and claims relief for breach thereof. A criminal proceeding on the other hand is ordinarily one in which if carried to its conclusion it may result in the imposition of sentences such as death, imprisonment, fine or forfeiture of property. It also includes proceedings in which in the larger interest of the State, orders to prevent apprehended breach of the peace, orders to bind down persons who are a danger to the maintenance of peace and order, or orders aimed at preventing vagrancy are contemplated to be passed....."

There cannot any dispute about the fact that the provisions in Chapter IX, Cr.P.C. are provisions specifically incorporated into the Code with the aim of preventing vagrancy. As such going by the observations of the Supreme Court, it has to be held that a proceeding u/s 125, Cr.P.C. is a criminal proceeding even though it may not be a proceeding initiated with reference to an offence and with a view to get the respondent punished for an offence. It may also be true that the relief given under Chapter IX, Cr.P.C. is essentially of a civil nature as held in Nanda Lal's case (supra). Though there is an observation in Nanda Lal's case (supra) that proceedings under Chapter IX, Cr.P.C. are of a civil nature, in the light of the categorical statement of law contained in the later constitutional Bench of the Supreme Court in Narayan Rao's case (supra), we will not be justified in treating the proceedings u/s 125, Cr.P.C., essentially of a civil nature following Nanda Lal's case (supra) or the observation in

the Full Bench decision reported in *Balan Nair v. Valsalamma* 1986 KLT 1378 (FB). The law of precedents would compel us to follow *Narayan Rao's* case (supra) in preference to *Nanda Lal's* case (supra) while deciding the nature of the proceedings exercised by the Family Court u/s 7(2)(a) of the Act. The Supreme Court has clearly stated in *Union of India v. K.S. Subramanian* AIR 1976 SC 2433, that when different Benches of the Supreme Court have expressed different opinions on a point, the proper course for the High Court is to try to find out and follow the opinions expressed by larger Benches in preference to those expressed by smaller Benches. As such we would be justified in holding that as regards the nature of the proceedings under Chapter IX, Cr.P.C. we are bound by the decision in *Narayan Rao's* case (supra). We may also in this connection refer to the decision in [Harbhajan Kaur Vs. Sant Singh](#), , where it has been held that proceedings u/s 488, Cr.P.C. is a criminal proceeding and not a civil proceeding. As regards *Balan Nair's* case (supra) it has to be pointed out that *Nanda Lal's* case (supra) alone was referred to therein. The decision in *Narayan Rao's* case (supra) was not brought to the notice of the Full Bench. Further except stating that "we are of the opinion that they are essentially of a civil nature" there is no other reason stated for taking such a view. It is significant to note that the Full Bench has also taken note of the object with which the provisions in Chapter IX, Cr.P.C. are incorporated in the Code as prevention of vagrancy and amelioration of distress in paragraph 15 of the judgment. Supreme Court has clearly laid down in *Narayan Rao's* case (supra) that such it may not be possible to accept the decision in *Balan Nair's* case (supra) as an authority when the nature of the proceedings u/s 125, Cr.P.C. has been correctly understood and laid down authoritatively. We would accordingly hold that the proceedings under Chapter IX, Cr.P.C. is criminal proceedings.

9. Further if as contended by the learned Counsel, the Legislature was aware of the judicial view taken about the nature of the proceedings under Chapter IX, Cr.P.C. and wanted to treat such proceedings also as civil proceedings like other civil proceedings, there was no need to confer the jurisdiction describing it as one exercisable by Magistrates under Chapter IX, Cr.P.C. adopting the legislative technique of incorporation by reference to the provisions in the entire Chapter IX, Cr.P.C. and declare that proceedings under that Chapter shall be dealt with in accordance with the provision in the Cr.P.C. The provision in Clause (f) of Explanation to Section 7(1) of the Act itself would have been sufficient to cover all claims for maintenance. Except the difference in the procedure to be followed, one and the same Court is to entertain and dispose of the claims for maintenance filed, both under Clause (f) and u/s 7(2)(a). There would not also have been any need to prescribe specifically that such proceedings shall be governed by the provisions of the Cr.P.C. in all respects including the execution. It was also not necessary to exclude the order passed in exercise of the jurisdiction u/s 7(2)(a) of the Act from the purview of the provision in Section 19(1) providing an appeal to the High Court to be disposed of by a Bench of two Judges and provide only a remedy of revision making

a provision similar to the provision contained in Section 397, Cr.P.C. It is relevant to note that even a suit or proceeding entertainable by a Munsiff if disposed of by a Family Court, an appeal to the High Court to be disposed of by a Bench of two Judges will lie against the decision of the Family Court. In the circumstances, the fact that only a revision as provided in Section 397, Cr.P.C. is provided against the orders passed u/s 7(2)(a) of the Act in our view is a clear indication of the legislative intent to treat the jurisdiction conferred u/s 7(2)(a) as that of a Criminal Court in contrast to that conferred u/s 7(1) exercisable by the Civil Court, namely District Court and all other subordinate Civil Courts.

10. The statutory prescription that the provisions in the Cr.P.C. shall apply to the proceedings u/s 7(2)(a) of the Act would also indicate that Family Court while disposing of the proceedings u/s 7(2)(a) can be considered only as a Criminal Court or at least as a Court acting as a Criminal Court. At any rate, we are of the view that it may not be legal or logical to treat the Family Court as a Civil Court while exercising jurisdiction u/s 7(2)(a) of the Act. The weighty observation of Beanmont, C.J. in the decision reported in *Emperor v. Bhatu Sadu*, AIR 1938 Bombay 225, strongly relied upon by Mr. Vijaya Bhanu is relevant and can be usefully quoted in this connection.

".....If the Court hearing the appeal is a Civil Court it seems to me that its procedure must be governed by the Civil Procedure Code, and if the Court holds that the procedure is governed by the Criminal Procedure Code, that must be on the basis that the Court is acting as a Criminal Court, and if it is acting as a Criminal Court, I do not see why the powers of revision should not be those conferred by Section 439, Cr.P.C. and not those conferred by Section 115, Civil Procedure Code...."

The learned Judge was considering the question whether a Civil Court while disposing of an appeal u/s 476B, Cr.P.C. corresponding to Section 341 of the present Code, acts as a Civil Court or as a Criminal Court and whether High Court has jurisdiction to revise the judgment of the Appellate Court u/s 439, Cr.P.C. The situation in this case is also some what similar. As such we would in this case respectively adopt the reasoning of the learned Judge and would hold that proceeding under Chapter IX, Cr.P.C. before the Family Court could be governed by the provisions of the Cr.P.C. only on the basis that the Court is acting as a Criminal Court. A Full Bench of the Punjab High Court has also followed the reasoning of Beanmont C.J., in the decision reported in [Hakim Rai Vs. The State](#) .

11. Mr. Dinesh Shenoty has contended that since the Family Court is exercising the powers of a Magistrate under Chapter IX, Cr.P.C., it may come within the definition of the word "Magistrate" contained in Section 3(32) of the General Clauses Act, 1897.

"Magistrate shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force."

We do not think that the question whether the Family Court can be considered as a Magistrate as defined in Section 3(32) of the General Clauses Act is a point arising for consideration in this case. As such we would leave the matter there.

12. We may in this connection refer to the object for which Section 19 of the Act was amended excluding the orders passed by the Family Court in proceedings u/s 125, Cr.P.C. from the purview of the appeal provision and providing only a revision against such orders under the provision incorporated as Subsection (4) of Section 19. The object for which the amendment was brought was to do away with the difference in the remedy provided against the orders passed in proceedings u/s 125, Cr.P.C. by the Family Court and the Magistrates in cases where the Family Court is not established. It is an exact reproduction of the provision contained in Section 397, Cr.P.C. The amendment so brought would also show the legislative intent to treat the jurisdiction exercised by the Family Court as one exercisable by a Criminal Court and to provide a remedy of revision as provided in the Cr.P.C. unlike in the case of a suit or proceeding entertainable by the Civil Court and governed by the provisions in the CPC.

13. In the light of what is discussed above, we are of the view that while exercising jurisdiction u/s 7(2)(a) of the Act and disposing of applications filed under Chapter IX, Cr.P.C., the Family Court acts as a Criminal Court and not as a Civil Court. In the circumstances, the view expressed by the Division Bench in its order dated 10.7.1997 cannot be accepted as correct. As such the revisions filed u/s 19(4) of the Act are liable to be treated as revisions filed against the orders passed by a Court acting as a Criminal Court and not as a Civil Court. In this view, we would direct the office to number the revision as "R.P. (Family Court)" liable to be disposed of by a Single Judge u/s 3(8) of the High Court Act as a proceeding of a Criminal Court.

14. As held above, if the revisions are treated as arising out of an order passed by a Court acting as a Criminal Court, it would avoid the somewhat anomalous situation of revisions filed u/s 19(4) of the Act being heard by a Division Bench of this Court treating it as a revision against an order passed by a Civil Court functioning under a special enactment whereas the criminal revisions filed u/s 397, Cr.P.C. or criminal miscellaneous cases filed u/s 482, Cr.P.C. against orders passed in Section 125, Cr.P.C. proceedings by the Magistrate or Sessions Court as the case may be are heard and disposed of by a Single Judge of this Court though the jurisdiction exercised is one and the same. Taking note of the nature of the proceeding as a summary one in which a Magistrate or a Family Court is empowered to pass an order for maintenance only upto a maximum amount of Rs.500/- there may not be any jurisdiction for requiring a Division Bench to hear and dispose of the revisions filed against such orders unless statutorily compelled to do so.

15. We record our deep appreciation about the exhaustive manner in which all Counsel including the amicus curiae have argued the points.

We would answer the questions accordingly.