Raghava Warrier Vs Sarojini Warasyar and Another

S.A. No. 1086 of 1983

Court: High Court Of Kerala

Date of Decision: July 21, 1989

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 125#Specific Relief Act, 1963 â€" Section 38

Citation: (1990) 1 DMC 164

Hon'ble Judges: S. Padmanabhan, J

Bench: Single Bench

Advocate: M.B. Kurup and T.M. Chandran, for the Appellant; T.R.G. Warrier, Sebastian Davis and Jyothiprasad, for the Respondent

Final Decision: Dismissed

Judgement

S. Padmanabhan, J.
Plaintiff Appeals. First defendant is his wife. Second defendant is their minor child. First defendant''s brother married

plaintiff''s sister. They fell out. That incident affected the relationship of plaintiff and first defendant to such an extent that first defendant was forced

to approach the Criminal Court for maintenance u/s 125 of the Code of Criminal Procedure for herself and the child. After keen contest before the

Magistrate, Sessions Judge and this Court, the ultimate result was a concluded order for maintenance at the rate of Rs. 200 and Rs. 100

respectively per month for the mother and child.

2. The present suit is for a declaration that the orders are void and for consequential injunction against enforcement. Defendants contested. Parties

examined themselves and proved large volume of documentary evidence, most of which are letters exchanged between them and their relations.

The Munsiff dismissed the suit with Rs. 300 as compensatory costs. Appeal filed by the plaintiff was partly allowed. Order for compensatory was

vacated. The decree was confirmed in other respects without consideration on the merits for the reason that though several grounds were taken up

in the memorandum of appeal, the only ground pressed at the time of arguments was the one relating to compensatory costs. In the second appeal,

supported by an affidavit from the Advocate who argued the case before the appellate Court, the alleged concession is denied and a decision on

the merits is canvassed.

3. The situation is really unfortunate. Though it may be desirable and advantageous to have concessions recorded under the signature of the maker

in order to avoid confusions and difficulties, such a procedure may not always be possible on account of practical difficulties. During the course of

arguments, counsel may be making concessions on factual and legal questions. It may not be possible or practicable to get these concessions

recorded under the signature of the maker. In some cases, the argument notes of the presiding officer may be the only record,, other than the

judgment or order, from which the correctness of the concession could be verified later in case of doubt or dispute. In some cases, such a record

also may not be available and what is contained in the judgment or order and the memories of the Presiding Officer or the Advocate alone could

be looked upon. Instances are not rare when, after making concessions, on account of difficulties in owning it, the counsel may request the Court

that it may not appear on record that he conceded. That may be because he is not quite sure of the justification for the concession or because he

does not want to make it appear so for his own reasons. In such cases, Courts may be deciding matters on merits.

4. Grounds taken up in the appeal memorandum or some other paper may not be an index to test the correctness or otherwise of the concession.

Oral submissions always do not conform to written submissions. In the course of argument, counsel, often, wisely and fairly, make concessions,

which may not find a place in the written submissions. Discussion draws out many a concession. After preparing the case for final arguments or

after hearing counter-arguments and understanding the views of the Judge also, a fair and wise counsel may sometimes make concessions which he

believes to be necessary but not palatable to his client on account of his personal interest or vengeance to the opponent. He may have to face the

wrath of the clients sometimes when he knows about the concessions.

5. The party or atleast the counsel will normally see the judgment or order immediately after it is pronounced. If any happenings in court during

arguments or before or after have been wrongly recorded in the judgment, atleast the counsel will know about it. It is his duty to be fair towards

the Judge also by calling his attention, by a review petition or otherwise to the statement made in error, when the matter is still fresh in the mind of

the Judge, Madhusudan v. Chandrabati AIR 1917, P.C. 30. It may also sometimes be possible for a judge to refer his notes and correct mistakes,

if any. Such a course is adopted, the appellate Court may also get some more materials in an appropriate case for consideration, if any. By lapse of

time, the memory of the counsel is also likely to fail and he may be in a confusion, when confronted by the client, to say whether or not he made the

concession and if so to what extent it was made. That is the only way to have the record of Court corrected. If no such step is taken, the matter

must necessarily and there. Without showing that observance of natural justice and promptness, if a counsel later files an affidavit in appeal, it has

only to be discouraged by rejection. A party may resile from a concession on the ground that it was made on a wrong application of the law or fact

and had led to gross injustice and the appellate court may permit him in rare and appropriate cases. But he may not be permitted to call in question

the very fact of making the concession recorded in the judgment State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, . It is plain that

in cases of this character where a litigant feels aggrieved by the statement in a judgment that an admission has been made, the most convenient and

satisfactory course to follow, whenever practicable, is to apply to the judge without delay and ask for rectification or review of the judgment, Sarat

Chandra Maiti and Others Vs. Bibhabati Debi and Others,

6. The judge''s record is conclusive. Neither lawyers nor litigant may claim to contradict it, except before the judge himself, but nowhere else. I am

not unaware of the complaint in some cases against the judge''s record and I feel that a bit but a general caution to them to be careful in correctly

understanding and recording the concession also may not be out of place. But as Martion B observed in, M.V. Mallor 1858 7 C CC 454, we

must consider the statement of the learned Judge as absolute verify and we ought to take his statement precisely as a record and act on it in the

same manner as on a record of court which of itself implies an absolute varity. Those proceedings emphasise the importance of rigidly maintaining

the rule that a statement by a learned Judge as to what took place during the course of a trial before him is final and decisive. It is not to be

criticised or circumvented, much less is to be exposed to animad version, The King Emperor Vs. Barendra Kumar Ghose, But I wish to add one

rider that in cases where some mistake or confusion is patent on the face of the record from the Judge''s record itself, the position may be different.

In such cases, it may be more conducive to justice to obtain the remarks of the Judge before dealing with the matter.

7. The appellate Court cannot launch into an enquiry as to what transpired in the court below. Public policy bars it and judicial decorm restrains it.

Matters of judicial record are unquestionable and not open to doubt. Judges cannot be dragged into the arena and judgments cannot be treated as

mere counters in the game of litigation. Somasundaram v. Subramaniam AIR 1926 PC 136. Statement of the Judge recorded in the judgment as to

what transpired in Court must be accepted as it is and they cannot be allowed to be contradicted by statements at the Bar or by affidavit and other

evidence. What the Judge says recording something done or admitted before him should be the last word on the subject. They are conclusive of

the facts stated and no one can contradict it by affidavit or other evidences State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, . The

matter is covered by various other decisions, earlier and later, but I am not referring to them in order to avoid repetition.

8. In this case, there are three considered orders of the Magistrate, Sessions Judge and this Court allowing maintenance u/s 125 of the Code of

Criminal Procedure after considering all the contentions and evidence. The trial Court again considered the claim and rejected it with compensatory

costs. The mere fact of the appellant approaching the civil Court after previous contest in three courts indicates his attitude towards his wife.

Whatever may be his reason or justification, he has categorically admitted in the box that under no circumstance he is prepared to take back his

wife and maintain her by allowing her to live with him. He admitted not having seen the child at all. Justification for claiming separate maintenance is

the main controversy. Any fair and reasonable Counsel in these circumstances is likely to have given up other contentions and pressed only the

challenge against compensatory cost at the time of arguments genuinely believing that the other contentions may not stand atleast after hearing the

counter arguments and noting the approach of the Judge. It is quite natural that the client who is very much after the cause may not have liked it.

Judge has no reason to make a wrong record of a concession and no reason is attributed also. There is also the aspect that the counsel did not

challenge the statement before the Judge'' himself.

Second Appeal has no merits and it is dismissed with costs.