

Gh. Mohammad Tantray Vs Mst. Shahida Akther

Court: Jammu & Kashmir High Court (Srinagar Bench)

Date of Decision: March 7, 2006

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 488

Citation: (2007) 1 JKJ 498

Hon'ble Judges: Bashir. A. Kirmani, J

Bench: Single Bench

Judgement

Bashir A. Kirmani, J.

Impugned in this revision petition is an order dated 21.04.05 purporting to have been passed by Judicial Magistrate

Anantnag u/s Cr.P.C, whereunder while allowing respondents maintenance petition, he directed petitioner to pay Rs. 1200/- to each one of 1 to 5

and Rs. 1500/- to respondent No. 6.

2. Grounds pleaded against the order are that the admitted income of petitioner who is government employee was Rs. 6911/- and the maintenance

allowance was much beyond his total income, and as such not reasonable; particularly because the respondents who are admittedly his children

and wife are residing in his house at Dharhama Phalgam and enjoying the produce of his agricultural land and walnut trees.

In reply the respondents counsel has argued that petitioners are completely down trodden and deserted deserving maintenance from petitioner and

as such the impugned order is well founded in fact and law.

3. I have gone through the records and considered the matter. Perusal of subordinate file reveals that proceedings u/s 488 Cr.P.C. were instituted

before trial Magistrate as far back as 22nd Oct. 2001 whereafter the first round concluded on 15.04.2002 with an ex-parte order against

petitioner, directing hi to pay Rs. 500/- per head to respondents 1 to 5 and Rs. 800/- to respondent No. 6 per month as maintenance. The ex-

parte order was however set aside on petitioner's prayers, whereafter the matter was contested by parties afresh and the trial finally culminated in

the plunged order; awarding Rs. 7500/- as maintenance to respondents with aforesaid break up.

4. Before proceeding further, it appears Unavoidable to notice the surprising element of the matter that when proceeded against in ex-parte, the

petitioner was burdened with the total amount of Rs. 3300/- per month as maintenance payable to respondents, but after he contested the matter

same got enhanced to Rs. 7500/- i.e. almost double the earlier amount. This feature of the matter very clearly reflects the difference which the

different approach of different Magistrates trying the same matter can make, and with glaring clarity indicates the extent to which the personal

attitude of Magistrates effects the determination of matters pending before them. Assessing objectively, the gap should not have been so much, for

the simple reason that judicial parameters of assessing a cause and prescribing the remedy should ordinarily not be so different. That it has been so

suggests that individual perceptions sometimes superimpose themselves over objective appreciation by Magistrates. The case in hand reflects this

aspect very seriously and projects the necessity of imparting continuous training to Judicial Magistrates/officers so that they are moulded in a

uniform mould of judicial thinking and approach that would ultimately chisel their individual perceptions to reflect a visible uniformity of judicial

perceptions and approach of individual judicial functionaries.

5. However, coming to the matter in hand, it appears that learned trial Magistrate has fallen victim to a streak of over enthusiasm while fixing the

quantum of maintenance payable to respondents which is not justifiable even in terms of his own judgement also, wherein while admitting

petitioner's income to be Rs. 6911/- per month he has opined that in given circumstances payment of 1/6th of his total income to respondents as

maintenance would be justified, but thereafter, quantified it, as already said to the tune of Rs. 7500/- without mentioning any wherein the judgment

as to what other income the petitioner had, or what otherwise his total income was.

6. There is also nothing in impugned order to suggest as to on what basis learned Magistrate fixed the quantum of maintenance with reference to

respondents on the same scale, while admittedly two of them are below 9 years and other three are grown up. In addition thereto, I find that

learned Magistrate has not appreciated the statements of petitioner's witnesses in their fullness, which too say the least suggests a cursory appraisal

of evidence, obviously leading him to unfounded conclusions. Even from a one sided appreciation of the case of respondents for maintenance

exclusively on basis of evidence produced by them it percolates that they are presently residing in petitioner's house at his ancestral village and also

cultivating his land and enjoying the produce thereof along with that of the trees etc. This fact though vitally important does not find any mention in

the impugned order despite admission thereof by respondents No. 6, during her examination which renders the fixation of the extent of petitioner's

liability in ring; which becomes more pronounced by total absence of any material suggest as to what additional income other than his admitted,

salary of Rs. 6911/-per month does the petitioner have which could justify fixation of Rs. 7500/-as 1/6th thereof.

7. That being so, the impugned order in so far it related to fixation of quantum of maintenance payable by petitioner to respondents appears to be

slightly harsh and one sided. Keeping in view the fact, that respondents are in all probability enjoy the produce of petitioner's agricultural land

situated at village and residing in his house the appropriate amount of maintenance payable to three grown up children appears to be around Rs.

600/- and for minors Rs. 500/- per month; while for respondent No. 6 the petitioner's wife, it should be around Rs. 1000/- bringing total amount

of maintenance payable to respondent family to Rs. 3800/- per month, which, with the given standard of living that would be normal in the remote

village of Valley, where respondents reside, should be enough for them to sustain themselves, particularly in view of the fact that they are already

enjoying his landed properties there.

8. Before concluding however, it would be appropriate to observe that the present revision petition which arises out of an order of Judicial

Magistrate Anantnag could and perhaps should well have been instituted in the Sessions Court at Anantnag where respondents would find it easy

to prosecute their case rather than in this Court which must have put them to greater inconvenience and expenditure. That the revision petition has

been instituted in this court instead of concerned Sessions Court perhaps appears to have been occasioned by the fact that petitioner resides at

Srinagar and instead of going to prosecute the revision petition at Anantnag he chose to drag the respondents all the way from Phalgam to

Srinagar, which even though permissible in view of the concurrency of revisional jurisdiction of this Court and the Court of Sessions can perhaps

not be approved in attending realities of the case. Given that it would perhaps be advisable that as a matter of practice institution of revision

petitions against Magistrate orders be restricted to courts of Sessions, which besides being convenient for the parties would also be in the interests

of proceedings because being nearer to ground realities the Court of Sessions can ascertain facts and circumstances of a particulars case more

clearly , if necessary from parties directly and in suitable cases try negotiated settlements also.

9. With those observations, the revision petition is partly allowed and the order impugned modified to the extent indicated therein above. For

conveying the observations made in para no. 4 & r. Registrar Judicial Srinagar, may ensure transmission of copies of this order for perusal of

Hon'ble Chief Justice.

10. The matter stands accordingly disposed of. Records be returned to Court below along with a copy of this order.