

Rajasthan High Court

Vijay Kumar vs State Of Rajasthan And Ors. on 6 November, 2003

Equivalent citations: II (2004) DMC 265, RLW 2004 (1) Raj 464

Author: Garg

Bench: S K Garg

JUDGMENT Garg, J.

1. This misc. petition under Section 482 Cr.P.C. has been preferred by the petitioner Vijay Kumar (husband) against the order dtd. 8.5.2002 passed by the learned Judge, Family Court, Jodhpur by which the learned Judge in the proceedings under Section 125 Cr.P.C. pending before him granted interim maintenance to respondent No. 2 Smt. Lovely @ Rs. 1000/- per month, be quashed and set aside.

2. It arises in the following circumstances:

i) Respondent No. 2 Smt. Lovely (wife) filed an application under Section 125 Cr.P.C. before the learned Judge, Family Court on 6.6.2001, Respondent No. 2 (wife) also filed an application for interim maintenance along with application under Section 125 Cr.P.C.

ii) From the order sheet dtd. 8.5.2002, it appears that on that date, respondent No. 2 (wife) filed some affidavits in support of application for interim maintenance and on the same day, the learned Judge, Family Court heard the arguments and granted interim maintenance @ Rs. 1000/- per month to the respondent No. 2.

3. Aggrieved from the order dtd. 8.5.2002, the petitioner (husband) has filed this misc. petition under Section 482 Cr.P.C.

4. In this misc. petition, the main contention of the learned counsel for the petitioner-husband is that on 8.5.2002 non- petitioner No. 2 (wife) filed some affidavits and on the same day, without giving him an opportunity to rebut the same, the learned Judge, Family Court passed the impugned order dtd. 8.5.2002 and therefore, the order dtd. 8.5.2002 was passed without giving an opportunity to rebut the affidavits filed by the respondent-wife and thus, it amounts to abuse of process of Court and this Court under Section 482 Cr.P.C. should interfere in the order dtd. 8.5.2002 and the same should be quashed and set aside.

5. This misc. petition has been contested by the learned counsel appearing for the respondent - wife who has submitted that no revision petition lies against the order for interim maintenance and hence this misc. petition should be dismissed and for this he has placed reliance on the order of this Court dtd. 23.1.2002 in the case of Chhotu Singh v. Smt. Basanti (1), in which this Court has held that no revision lies against the order of interim maintenance as it is an interlocutory order.

6. Heard the learned counsel for the parties.

7. It may be stated that this is a misc. petition under Section 482 Cr.P.C. and not revision petition under Section 397 Cr.P.C. It may further be stated here that inherent powers under Section 482 Cr.P.C. are meant to be exercised sparingly and with circumspection where there is reason to believe that the process of law is being misused. The Hon'ble Supreme Court in the case of Municipal Corporation of Delhi v. Ram Kishan (2), has held as under:

"While Section 397(2) applies to the exercise of revisional powers of the High Court, Section 482 regulates the inherent powers of the court to pass orders necessary in order to prevent the abuse of the process of the Court. It is well settled that the inherent power under Section 482 of the Code can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by the statute. Further, the power being an extraordinary one it has to be exercised sparingly, if these considerations are kept in mind, there will be no inconsistency between Sections 482 and 397(2)."

8. Thus, since no revision petition lies against the impugned order dtd. 8.5.2002, therefore, the question which arises for consideration in the facts and circumstances of the present case is whether present case is a fit case where this Court should exercise inherent power under Section 482 Cr.P.C. or not.

9. Powers under Section 482 Cr.P.C. can be exercised in relation to interlocutory order in the following cases:

i) The power is not to be restored to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party.

ii) It should be exercised very sparingly to prevent abuse of process of any court or otherwise to secure the ends of justice.

iii) It should not be exercised as against the express bar of law engrafted if any other provision of the Code.

10. That the learned Judge, Family Court in his impugned order dtd. 8.5.2002 has clearly observed that the petitioner-husband has not rebutted the case of the respondent No. 2 as put forward by her through affidavits. The order sheet dtd. 8.5.2002 clearly speaks that on 8.5.2002, respondent No. 2 filed some affidavits and on the same day arguments on the application for interim maintenance were heard and the impugned order was passed, meaning thereby the petitioner was not given any opportunity to rebut the sanctity of affidavits filed by the respondent No. 2. When this being the position, it clearly appears that by passing the impugned order dtd. 8.5.2002, the learned Judge, Family Court has abused the process of court as no opportunity to rebut the affidavits was accorded to the petitioner-husband. In this view of the matter, it is a fit case where this Court should interfere in the impugned order dtd. 8.5.2002, though it might be interlocutory order, while exercising power under Section 482 Cr.P.C. to secure the ends of justice between the parties because no other remedy is available against the order dtd. 8.5.2002.

11. Since this is a misc. petition under Section 482 Cr.P.C. and not revision petition under Section 397 Cr.P.C., therefore, the judgment in the case of Chhotu Singh (supra), on which reliance has been placed by the learned counsel for the respondent No. 2 would not be helpful to the learned counsel for the respondent No. 2.

12. For the reasons mentioned above, this misc. petition deserves to be allowed and the impugned order dtd. 8.5.2002 passed by the learned Judge, Family Court is liable to be quashed and set aside.

Accordingly this misc. petition filed by the petitioner Vijay Kumar is allowed and the impugned order dtd. 8.5.2002 passed by the learned Judge, Family Court, Jodhpur is quashed and set aside and the case is remanded back to the learned Judge, Family Court, Jodhpur with a direction to decide the application for interim maintenance filed by respondent No. 2 a fresh after giving an opportunity of rebuttal to the petitioner. The parties are directed to appear before the learned Judge, Family Court, Jodhpur on 20.11.2003. The petitioner is directed to file affidavits, if any, before the learned Judge, Family Court, Jodhpur on or before 20.11.2003.