

**SUPREME COURT OF INDIA**

Prasanta Kumar Dey

Vs.

State of W.B.

CrI.A.No.1050 of 2000

(R. C. Lahoti and Brijesh Kumar, JJ.)

04.12.2000

**ORDER**

1. Delay condoned.

2. Leave granted.

3. On a petition under Section 125, Cr.P.C. filed by the wife-respondent No. 2, the 3rd Judicial Magistrate, Alipur directed maintenance @ Rs. 800/- for the wife-respondent No. 2 and @ Rs. 800/- for the child of the parties to be paid by the husband-appellant before us. This order was an ex parte order. The appellant moved an application under Section 126(2), Cr.P.C. seeking setting aside of the ex parte order and giving the appellant an opportunity of contesting the petition under Section 125, Cr.P.C. on merits. One of the pleas raised in the application was that the Magistrate did not have jurisdiction under Section 125, Cr.P.C. to grant maintenance at a monthly rate exceeding Rs. 500/-. It appears that this application was not pursued and therefore came to be dismissed. The appellant preferred a criminal revision under Section 397, Cr.P.C. before the Sessions Judge, which was dismissed. The appellant preferred further revision, also invoking the inherent powers of the High

Court, to interfere with the order of the learned Sessions Judge and the learned Judicial Magistrate. By order dated 1-3-1999, the revision application preferred by the appellant has been directed to be dismissed on the ground that it being a second revisional application, was not maintainable before the High Court.

4. Learned counsel for the appellant has relied the decision of this Court in Krishnan and Anr. v. Krishnaveni and Anr., JT 1997 (1) (SC) 657, to contend that what is prohibited under sub-section (3) of Section 397, Cr.P.C. is a simultaneous revision, but AIR 1997 SC 987 : 1997 AIR SCW 950 : 1997 Cri LJ 1519 the inherent power of the High Court is still available under Section 482 of the Code and it is paramount power of continuous superintendence of the High Court, and the High Court is justified in interfering with any order leading to miscarriage of justice and in setting aside the order of the Courts below, if necessary to serve the ends of justice.

5. In the facts and circumstances of the present case, we are of the opinion that the present one is a fit case where the High Court ought not to have dismissed the revision preferred before it solely on the ground of non-maintainability but should have gone into the merits so as to find out if it was a fit case calling for interference of the High Court, shorn of technicalities under Section 401 read with Section 482 of the Cr.P.C.

6. The appeal is allowed. Order dated 1-3-1999 of the High Court is set aside. The revision application filed by the petitioner before the High Court is restored to file for being disposed of on merits consistently with the view of the law taken by this Court in the case of Krishnan and Anr. v. Krishnaveni and Anr. (supra). AIR 1997 SC 987 : 1997 AIR SCW 950 : 1997 Cri LJ 1519

Appeal allowed.