

SUPREME COURT OF INDIA

Dawalsab

Vs.

Khajasab

Crl.A.No.1236 of 2009

(Altamas Kabir and Cyriac Joseph JJ.)

15.07.2009

ORDER

Altamas Kabir, J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated 12th March, 2008, passed by the Karnataka High Court in Revision Petition (FC) No.27/2007 (Crl. Misc.) dismissing the same. The said revision petition had been filed against the order passed by the learned Judge, Family Court at Bijapur, on 9th February, 2007, in Crl. Misc. No.187 of 2004, dismissing the petition filed by the appellant under Section 125 Cr.P.C.

3. The appellant is the father of the respondent and had filed the aforesaid petition under Section 125 Cr.P.C. for payment of monthly maintenance of Rs.5,000/- from the respondent on the ground that having become old and not having any source of income, he was unable to maintain himself, whereas the respondent was an employee of the Anjuman College, Syndagi and was well off. The said petition was dismissed as indicated hereinabove.

4. In the revision filed by the appellant before the High Court, the High Court was of the view that the learned Family Judge had not committed any error of law or material irregularity which would warrant interference with the impugned order. The High Court proceeded on the basis that the learned Family Judge had rightly held that it did not have jurisdiction to entertain the petition which ought to have been filed in the Court within whose jurisdiction the appellant was resided. Reliance was placed on a decision of this Court in *Vijay Kumar Prasad v. State of Bihar*¹, wherein, after considering the provisions of Section 125 Cr.P.C., under which the appellants were also entitled to apply for maintenance, this Court took note of the provisions of Section 126 Cr.P.C. which are also relevant for our purpose and are extracted hereinbelow :-

"126. Procedure- Proceedings under Section 125 may be taken against any person in any district -

- (a) where he is, or
- (b) where he or his wife resides, or
- (c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child."

This Court took note of the words "resides", "is" and "where he last resided" with his wife. In the said decision, while taking notice of another decision of this Court in the case of *Jagir Kaur v. Jaswant Singh*², this Court held that the expression "is" has to be applied to the place where the person from whom maintenance is sought is normally available and cannot be construed to be a mere fleeting presence."

5. Relying on the said decision, the High Court held that the appellant was not entitled to maintain the revision petition before the Family Court at Bijapur, since the respondent was working in the Anjuman College at Syndagi.

6. Appearing for the appellant, Mr. Girish Ananthamurthy, learned Advocate, submitted that the High Court had proceeded on an erroneous basis in interpreting the provisions of Section 126(1) (a) Cr.P.C. without taking note of the very initial wordings of Section 126(1) Cr.P.C. which provides that proceedings under Section 125 Cr.P.C. may be taken against any person in any district [emphasis supplied] and qualifies clauses (a), (b) and (c) thereof. Learned counsel submitted that in the instant case having regard to the provisions of Sections 7 and 8 of the *Family Courts Act, 1984* the only forum in which the application for maintenance under Section 125 Cr.P.C. could have been filed by the appellant was before the Family Court of the district which was situated at Bijapur. Accordingly, since Syndagi also fell within the district of Bijapur and was subject to the jurisdiction of the Family Court at Bijapur, the petition had been rightly filed before the learned Judge of the Family Court. Learned counsel urged that the High Court had misconstrued the provisions of Section 126 (1) Cr.P.C. without taking note of the provisions of the Family Courts Act, 1984.

7. On behalf of the respondent, Mr. Shankar Divate, learned Advocate, attempted to justify the decision of the High Court on the same lines on which the High Court had passed its order.

8. The only question which we are called upon to consider is whether the learned Family Judge as also the High Court were correct in determining the question of jurisdiction on the basis of the expression used in Section 126(1)(a) Cr.P.C. without taking into consideration the provisions of Sections 7 and 8 of the Family Courts Act, 1984, or the opening words of Section 126(1) Cr.P.C. The wordings have been interpreted by the High Court and the Family Court to mean that the petition ought to have been filed in Syndagi where the respondent (son of the appellant) was working. Both the learned Family

Court Judge and the High Court appear to have missed the fact that an application under Section 125 Cr.P.C. has to be taken against any person in any district where the person is. In the instant case, Syndagi also falls within Bijapur district. Accordingly, under Section 126(1)(a) Cr.P.C., the jurisdiction for filing any proceeding under Section 125 would be in Bijapur itself where the Family Court for the district is situated and since Syndagi is within the said district. Furthermore, as far as the jurisdiction of the Family Court with regard to civil matters is concerned, the same is set out in Section 7(1) of the Family Courts Act, 1984. Sub-section (2) of Section 7 provides for the jurisdiction of the Family Courts with regard to relevant criminal matters and reads as follows :-

“7. Jurisdiction. -

(1)

(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; and

(b) such other jurisdiction as may be conferred on it by any other enactment." Section 8(b) of the above Act which is also relevant to the facts of this case is also extracted hereinbelow :-

"8. Exclusion of jurisdiction and pending proceedings - Where a Family Court has been established for any area -

(a)

(b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the *Code of Criminal Procedure, 1973* (2 of 1974);

(c)"

9. In the instant case, it is the Family Court, therefore, which has jurisdiction to entertain the petition filed by the appellant. The petition had been rightly filed before the Family Court at Bijapur, which is situated in Bijapur, since under Section 8(b) of the Act the magistrate's jurisdiction under Chapter IX Cr.P.C. has been excluded. Reading the opening words of Section 126(1) Cr.P.C. with Section 7(2)(a) of the Family Courts Act, 1984, it is quite clear that it was the Family Court at Bijapur which had the jurisdiction to entertain the petition filed by the appellant under Section 125 Cr.P.C. The decision cited on behalf of the respondent did not have occasion to consider these aspects of the matter which are peculiar to the facts of this case.

10. Having regard to the above, we allow the appeal and set aside the orders passed, both by the Family Court and the High Court, and remand the matter to the Family Court at Bijapur for fresh consideration in accordance with law.

11. The costs of this appeal is assessed at Rs.25,000/- which is to be paid to the appellant by the respondent.

¹[2004 (5) SCC 196]

²[AIR 1963 SC 1521]