Jagir Singh vs Ranbir Singh And Anr. on 8 November, 1978

Equivalent citations: AIR1979SC381, 1979CRILJ318, (1979)81PLR205, (1979)1SCC560, [1979]2SCR282, AIR 1979 SUPREME COURT 381, 1979 2 SCR 282, 1979 CRILR(SC MAH GUJ) 29, (1979) 1 APLJ 17, (1979) MARRILJ 1, 1979 CRI APP R (SC) 79, (1979) 2 SCR 318 (SC), 1979 (3) MAH LR 103, (1979) 6 CRI LT 17, 1979 SCC(CRI) 348, 81 PUN LR 205, 1979 81 PUN LR 205, (1979) SC CR R 182, (1979) MADLW(CRI) 64, (1979) MATLR 84, (1979) ALLCRIC 74, (1979) HINDULR 179, 1979 (1) SCC 560

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Bench: Jaswant Singh, O. Chinnappa Reddy

JUDGMENT

O. Chinnappa Reddy, J.

1. Jagir Singh, the appellant in this appeal by special leave, was married to Kirpal Kaur in 1951. Husband and wife became estranged in 1954, since when they have been living separately. Ranbir Singh, the issue of the marriage, was born in 1954. Jagir Singh married again and it is said that he has a son and a daughter by the second wife. On 25th May, 1971, Kirpal Kaur and Ranbir Singh filed an application for maintenance under Section 488 of the Criminal Procedure Code, 1898. One of the defences raised by the appellant to that application was that Ranbir Singh was a major and, therefore, not entitled to claim maintenance under Section 488. The Magistrate held that Ranbir Singh was a student who was unable to maintain himself and, therefore, the question whether he was a major or a minor was immaterial. On 19th May, 1973, he made an order awarding maintenance at the rate of Rs. 200/- per month to Kirpal Kaur and Rs. 75/- per month to Ranbir Singh, Jagir Singh filed a revision petition before the Sessions Judge. By consent of the parties, the Sessions Judge made a reference to the High Court recommending that the award of maintenance in favour of the wife should be reduced to Rs. 150/- per month and that the award of Rs. 75/- per month to the son should be confirmed. The reference was accepted by the High Court.

2. The Criminal Procedure Code 1898 was repealed and the Criminal Procedure Code 1974 was enacted in its place. The new Code came into force on 1st April, 1974. On 3rd May, 1974, the appellant made an application before the Magistrate, purporting to be under Section 127 of the new Code, for cancellation of the order of maintenance in favour of the son on the ground that the son had attained majority and did not suffer from any infirmity or abnormality which prevented him from maintaining himself. It was claimed on behalf of the appellant that under the new Code it was not permissible to award maintenance or enforce an order to maintenance in favour of a child who

had attained majority and who was not unable to maintain itself by reason of any physical or mental abnormality or injury. On 3rd June, 1974, the son filed a counter admitting that he had attained majority but claiming that he was still a student, unable to maintain himself. The son claimed that the order in his favour had been validly passed under the old Code and continued to remain in force notwithstanding the enactment of the new Code. On 9th May, 1975, the learned Magistrate allowed the application of the father under Section 127 of the Criminal Procedure Code 1974 and cancelled the order for maintenance made earlier in favour of the son. Ranbir Singh, the son, filed a Revision Application before the Sessions Judge. It was dismissed on 12th March, 1976. The learned Sessions Judge held that the order made under Section 488 of the old Code could survive under Section 484(2) of the new Code if there was a corresponding provision under the new Code which enabled the award of maintenance to a major child. Since there was no such corresponding provision the order under Section 477 in favour of Ranbir Singh ceased to be in force. Ranbir Singh then filed a Revision Application before the High Court of Punjab and Haryana which was allowed on 5th December, 1977. The High Court held that notwithstanding the change in the law which disentitled a major child from claiming maintenance, Section 125 of the new Code did correspond to Section 488 of the old Code. Therefore, the order for maintenance in favour of Ranbir Singh was saved by Section 484(2) of the Code of 1974. Jagir Singh has preferred this appeal after obtaining special leave from this Court under Article 136 of the Constitution.

3. Shri R.S. Narula, learned Counsel for the appellant contended that the Revision Application to the High Court was incompetent as it was barred by the provisions of Section 397(3) of the CrPC 1974. He argued that the right of the respondent to invoke the revisional jurisdiction of a superior Court became exhausted when he invoked the revisional jurisdiction of the Sessions Judge. Shri Narula further contended that under Section 125 of the Criminal Procedure Code 1974, a major son who did not suffer from any physical or mental abnormality or injury which prevented him from maintaining himself was not entitled to get an order for maintenance in his favour and that an order made in favour of such a son under Section 488 Criminal Procedure Code of 1898 was not saved either by Section 484(2) of the Code of Criminal Pocedure 1974 or Sections 6 and 24 of the General Clauses Act. Shri S.K. Mehta, learned Counsel for the respondent submitted that the revision application before the High Court could be treated and maintained as one directed against the order of the Sessions Judge rejecting the Revision Application made to him. In any case he argued that the Revision Application could be treated as one under Article 227 of the Constitution. He contended that the order of the Magistrate under Section 488 of the Criminal Procedure Code 1898 continued to be in force and that it could not be cancelled merely because Section 125 did not provide for the award of maintenance to a major son who did not suffer from any abnormality or injury.

4. The first question for consideration is whether the High Court was precluded from interfering with the order of the Magistrate in the exercise of its revisional jurisdiction by reason of the provisions of Section 397(3) of the Criminal Procdure Code 1974. Section 397 which corresponds to Section 435 of the Criminal Procedure Code 1898 invests the High Court and the Sessions Judge with concurrent revisional jurisdiction over inferior criminal Courts within their jurisdiction. The District Magistrate who also had revisional jurisdiction under Section 435 of the CrPC 1898 is now divested of such jurisdiction. In addition, there are, in the 1974 Code two important changes both of which are apparently designed to avoid delay and to secure prompt rather than perfect justice. The

first change is that introduced by Section 397(2) which bars the exercise of revisional power in relation to any interlocutory order passed in any appeal, enquiry, trial or other proceeding. The second is that introduced by Section 397(3) which provides that if an application under the Section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them. We are concerned with this provision in this appeal. The object of Section 397(3) is clear. It is to prevent a multiple exercise of revisional powers and to secure early finality to orders. Any person aggrieved by an order of an inferior Criminal Court is given the option to approach either the Session Judge or the High Court and once he exercises the option he is precluded from invoking the revisional jurisdiction of the other authority. The language of Section 397(3) is clear and peremptory and it does not admit of any other interpretation. We may also mention here that even under Section 435 of the previous CrPC, while the Sessions Judge and the District Magistrate had concurrent jurisdiction, like present Section 397(3) previous Section 435(4) provides that if an application under the Section had been made either to the Sessions Judge or District Magistrate no further application shall be entertained by the other of them.

5. In order to cross the hurdle imposed by Section 397(3) it was suggested that the revision application before the High Court could be treated as an application directed against the order of the Sessions Judge instead of an one directed against the order of the Magistrate. We do not think that it is permissible to do so. What may not be done directly cannot be allowed to be done indirectly, that would be an evasion of the statute. It is a "well-known principle of law that the provisions of an Act of Parliament shall not be evaded by shift or contrivance" (per Abbott C.J. in Fox v. Bishop of Chester (1824) 2 B & C 635 "To carry out effectually the object of a Statute, it must be construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined" (Maxwell, 11th edition, page 109). When the Sessions Judge refused to interfere with the order of the Magistrate, the High Court's jurisdiction was invoked to avoid the order of the Magistrate and not that of the Sessions Judge. The bar of Section 397(3) was, therefore, effectively attracted and the bar could not be circumvented by the subterfuge of treating the revision application as directed against the Session Judge's order.

6. If the revision application to the High Court could not be maintained under the provisions of the Criminal Procedure Code, could the order of the High Court be sustained under Article 227 of the Constitution, as now suggested by the respondent ? In the first place the High Court did not purport to exercise its power of superintendence under Article 227. The power under Article, 227 is a discretionary power and it is difficult to attribute to the order of the High Court such source of power when the High Court itself did not, in terms, purport to exercise any such discretionary power. In the second place the power of judicial superintendence under Article 227 could only be exercised, sparingly, to keep subordinate Courts and Tribunals within the bounds of their authority and not to correct mere errOrs. Where the statute banned the exercise of revisional powers by the High Court, it would indeed require very exceptional circumstances to warrant interference under Article 227 of the Constitution, since the power of Superintendence was not meant to circumvent statutory law. In the third place it was doubtful if the High Court could exercise any power of judicial superintendence on the date of its order as the Constitution 42nd Amendment Act had by then been passed. By the 42nd Amendment Act Clause (5) was added in Article 227 of the

Constitution and it says "Nothing in this article shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior Court which is not otherwise subject to appeal or revision". Clause (5) of Article 227 introduced by the 42nd Amendment Act is a verbatim reproduction of Sub-Section (2) of Section 224 of the Government of India Act, 1935 which it was held conferred powers of administrative superintendence only and not the power of Judicial Superintendence. In the present case the revision application was, however, filed before the passing of the 42nd Amendment Act and it was therefore, argued by the learned Counsel for the respondent that the High Court could exercise the power of superintendence possessed by it before the 42nd Amendment. We have serious doubts. Article 227, before the 42nd Amendment, gave no right to any party. An application invoking the High Court's power of Superintendence did not create any vested right in the suitor. There could, therefore, be no question of any vested right being taken away or not being taken away by the amendment. It was just a question whether the High Court possessed the power of Superintendence on the date of the High Court's order. There is no dispute that it did not. We do not wish to pursue the matter further as in our view there was no case to warrant interference under Article 227 of the Constitution.

7. In view of the foregoing discussion, the revision application to the High Court must be held to be incompetent. In that view it is unnecessary to go into the question whether the original order under Section 488, Criminal Procedure Code, 1898 in favour of the respondent could be cancelled under Section 127 of the Criminal Procedure Code 1974, But the lower Courts went into the question at some length and detailed submissions were made before us. We will express our opinion briefly.

8. Section 484(1) of the 1974 Code repeals the CrPC 1898. Section 484(2)(a) provides for the continuance and disposal of pending cases in accordance with the provision's of the old Code. Section 484(2)(b) provides that 'all notifications published, proclamations issued, powers conferred, forms prescribed, local jurisdictions defined, sentences passed and orders, rules and appointments made under the old Code and 'which are in force immediately before the commencement' of the new Code, shall be deemed, respectively, to have been published, issued, conferred, prescribed, defined, passed or made under the corresponding provisions of the new Code. In the present case the order of the Magistrate under Section 488 of the old Code awarding maintenance to the respondent was made on 19th May, 1973. The new Code came into force on 1st April, 1974. Therefore, the order was in force immediately before the commencement of the new Code. It must, therefore, be deemed to have been made under the corresponding provision of the new Code. The question, therefore, is whether there is any provision of the new Code corresponding to the provision of the old Code under which maintenance was awarded to the respondent. As we said, the respondent was awarded maintenance under Section 488 of the Criminal Procedure Code 1898. Under Section 488 Criminal Procedure Code 1898 a person having sufficient means and neglecting or refusing to maintain his wife or his legitimate or illegitimate child unable to maintain itself could be ordered to make a monthly allowance for the maintenance of his wife or such child. The word child used in Section 488 led to some controversy whether a person could be ordered to pay maintenance to a child who had attained majority but who was unable to maintain itself. In Nanak Chand v. Chandra Kishore Agarwal and Ors. the Supreme Court held that the word 'child' in Section 488 did not mean a minor son or daughter and that the real limitation was contained in the expression 'unable to maintain itself. Irrespective of whether a son or daughter was a major or minor, a father was bound to

maintain the son or daughter if such son or daughter was unable to maintain himself or herself. Section 125 of the 1974 Code makes a slight departure. Under this provision a child who has attained majority is not entitled to be awarded maintenance unless such child is unable to maintain itself by reason of any physical or mental abnormality or injury. According to Shri R.S. Narula in view of the change it cannot be said that the new Code contains any provision corresponding to the provision in the old Code which authorised the award of maintenance to a child who had attained majority and who was unable to maintain itself even if such child did not suffer from any physical or mental abnormality or injury. Therefore, according to Shri Narula, Section 484(2)(b) does not save an order awarding maintenance in favour of a child who has attained majority and who does not suffer from any physical or mental abnormality or injury. It is difficult to agree with the submission of Shri Narula. To accept the submission would be to give the expression "corresponding provision" the meaning "identical provision". Whenever an Act is repealed and re-enacted there are bound to be changes and modifications. To say that a modified provision dealing with the same subject matter in substantially the same manner as the original provision is not a corresponding provision would be to practically nullify the effect of a "Repeal and Savings" provision like Section 484((2)(b) of the new Code. In the Shorter Oxford English Dictionary-Third Edition-Vol. I, the word 'correspond' is said to mean' to answer to something else in the way of fitness; to agree with; be conformable to; be congruous or in harmony with. (2) To answer to in character or function; to be similar to". In Butterworths 'Words and Phrases-Legally defined' Second Edition Vol. 1, it is said " 'to correspond', does not usually, or properly, mean 'to be identical with', but 'to harmonise with', or 'to be suitable to' " and reference is made to Sackville-West v. Holmesdale (Viscount) (1878) L.R. 4 L.H. 543. We are, therefore, of the view that Section 125 of the new Code corresponds to Section 488 of the old Code notwithstanding the fact that under the new Code a child who has attained majority and who does not suffer from any infirmity is not entitled to be maintained by the father. We also note that there are no words in Section 484(2)(b) limiting its application to orders made and sentences passed which are not inconsistent with the provisions of the new Code. There are no such limiting words as may be found as for example in Section 24 of the General Clauses Act which limits its application to an order, rule, etc. "so far as it is not inconsistent with the provisions re-enacted". This does not mean that statutory instruments made under the old Code and which are inconsistent with the provisions of the new Code continue to be effective. All that Section 484(2)(b) says is that such statutory instruments shall be deemed to be made under the corresponding provisions of the new Code. Their validity will have to be tested like any other statutory instruments made under the provisions of the new Code and they will have to answer the test whether they are consistent with the provisions of the new Code. But, in the case of Judicial orders made and sentences passed, such orders and sentences which have attained finality and which have created rights in parties do not have to answer the test of being consistent with the provisions of the new Code. We, therefore, hold that the order for maintenance made in favour of the respondent must be deemed to be an order made under Section 125 of the new Code and that it does not automatically cease to be effective on the coming into force of the new Code. The High Court arrived at this conclusion and thought that it was sufficient to hold in favour of the respondent and to allow the Revision Application. We do not think that the High Court was right in stopping there. The High Court should have further considered the question whether the order for maintenance which was deemed to be an order under Section 125 of the new Code could not be cancelled under the provisions of Section 127 of the new Code. Once the order under Section 488 is deemed to be an order under Section 125 of the new

Code, it must be so deemed for all purposes including the application of Section 127 of the new Code. Section 127 provides for consequential orders upon proof of a change in the circumstance of any person receiving, under Section 125, a monthly allowance, or ordered under the same Section to pay a monthly allowance to his wife, child, father or mother, as the case may be. The admitted attainment of majority of the respondent and the change of the law were surely circumstances which entitled the appellant to have the order in favour of the respondent cancelled. We accordingly allow the appeal and set aside the judgment of the High Court.