Supreme Court of India
Bhuwan Mohan Singh vs Meena & Ors on 15 July, 1947
Author: D Misra
Bench: Dipak Misra, V. Gopala Gowda

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1331 OF 2014
(Arising out of S.L.P. (Criminal) No. 1565 of 2013)

Bhuwan Mohan Singh … Appellant

Versus

Meena & Ors. …Respondent

J U D G M E N T

Dipak Misra, J.

Leave granted.

The two issues that pronouncedly emanate in this appeal by special leave are whether the Family Court while deciding an application under Section 7 of the Family Court Act, 1984 (for brevity, "the Act") which includes determination of grant of maintenance to the persons as entitled under that provision, should allow adjournments in an extremely liberal manner remaining oblivious of objects and reasons of the Act and also keeping the windows of wisdom closed and the sense of judicial responsiveness suspended to the manifest perceptibility of vagrancy, destitution, impecuniosity, struggle for survival and the emotional fracture, a wife likely to face under these circumstances and further exhibiting absolute insensitivity to her condition, who, after loosing support of the husband who has failed to husband the marital status denies the wife to have maintenance for almost nine years as that much time is consumed to decide the lis and, in addition, to restrict the grant of maintenance to the date of order on some kind of individual notion. Both the approaches, as we perceive, not only defeat the command of the legislature but also frustrate the hope of wife and children who are deprived of adequate livelihood and whose aspirations perish like mushroom and possibly the brief candle of sustenance joins the marathon race of extinction. This delay in adjudication by the Family Court is not only against human rights but also against the basic embodiment of dignity of an individual.

Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short "the Code") was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial

home for the reasons provided in the provision so that some suitable arrangements can be made by the Court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able bodied. There is no escape route unless there is an order from the Court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.

Presently to the facts which lie in an extremely small compass. The marriage between the appellant and the husband was solemnized on 27.11.1997 as per Hindu rites and ritual, and in the wedlock a son was born on 16.12.1998. The respondent, under certain circumstances, had to leave the marital home and thereafter filed an application on 28.8.2002 under Section 125 of the Code in the Family Court, Jaipur, Rajasthan, claiming Rs.6000/- per month towards maintenance. The Family Court finally decided the matter on 24.8.2011 awarding monthly maintenance of Rs.2500/- to the respondent- wife and Rs.1500/- to the second respondent-son. Be it stated, during the continuance of the Family Court proceedings, number of adjournments were granted, some taken by the husband and some by the wife. The learned Family Judge being dissatisfied with the material brought on record came to hold that the respondent-wife was entitled to maintenance and, accordingly, fixed the quantum and directed that the maintenance to be paid from the date of the order.

Being dissatisfied with the aforesaid order the respondent-wife preferred S.B. Criminal Revision Petition No. 1526 of 2011 before the High Court of Judicature at Rajasthan and the learned single Judge, vide order dated 28.5.2012, noted the contention of the wife that the maintenance should have been granted from the date of application, and that she had received nothing during the proceedings and suffered immensely and, eventually, directed that the maintenance should be granted from the date of filing of the application.

Criticizing the aforesaid order, it is submitted Mr. Jay Kishor Singh learned counsel for the appellant that when number of adjournments were sought by the wife, grant of maintenance from the date of filing of the application by the High Court is absolutely illegal and unjustified. It is his submission that the wife cannot take advantage of her own wrong.

Mr. Mohit Paul, learned counsel for the respondents would submit that the Family Court adjourned the matter sometimes on its own and the enormous delay took place because of non-cooperation of the husband in the proceedings and, therefore, the wife who was compelled to sustain herself and

her son with immense difficulty should not be allowed to suffer. It is proponed by him that the High Court by modifying the order and directing that the maintenance should be granted from the date of filing of the application has not committed any legal infirmity and hence, the order is inexceptionable.

At the outset, we are obliged to reiterate the principle of law how a proceeding under Section 125 of the Code has to be dealt with by the court, and what is the duty of a Family Court after establishment of such courts by the Family Courts Act, 1984. In Smt. Dukhtar Jahan v. Mohammed Farooq[1], the Court opined that proceedings under Section 125 of the Code, it must be remembered, are of a summary nature and are intended to enable destitute wives and children, the latter whether they are legitimate or illegitimate, to get maintenance in a speedy manner.

A three-Judge Bench in Vimla (K.) v. Veeraswamy (K.)[2], while discussing about the basic purpose under Section 125 of the Code, opined that Section 125 of the Code is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife.

A two-Judge Bench in Kirtikant D. Vadodaria v. State of Gujarat and another[3], while adverting to the dominant purpose behind Section 125 of the Code, ruled that:

"While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation." In Chaturbhuj v. Sita Bai[4], reiterating the legal position the Court held: -

"Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Captain Ramesh Chander Kaushal v. Veena Kaushal[5] falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat[6]." Recently in Nagendrappa Natikar v. Neelamma[7], it has been stated that it is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children.

The Family Courts have been established for adopting and facilitating the conciliation procedure and to deal with family disputes in a speedy and expeditious manner. A three-Judge Bench in K.A. Abdul Jaleel v. T.A. Shahida[8], while highlighting on the purpose of bringing in the Family Courts

Act by the legislature, opined thus: -

"The Family Courts Act was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith." The purpose of highlighting this aspect is that in the case at hand the proceeding before the Family Court was conducted without being alive to the objects and reasons of the Act and the spirit of the provisions under Section 125 of the Code. It is unfortunate that the case continued for nine years before the Family Court. It has come to the notice of the Court that on certain occasions the Family Courts have been granting adjournments in a routine manner as a consequence of which both the parties suffer or, on certain occasions, the wife becomes the worst victim. When such a situation occurs, the purpose of the law gets totally atrophied. The Family Judge is expected to be sensitive to the issues, for he is dealing with extremely delicate and sensitive issues pertaining to the marriage and issues ancillary thereto. When we say this, we do not mean that the Family Courts should show undue haste or impatience, but there is a distinction between impatience and to be wisely anxious and conscious about dealing with a situation. A Family Court Judge should remember that the procrastination is the greatest assassin of the lis before it. It not only gives rise to more family problems but also gradually builds unthinkable and Everestine bitterness. It leads to the cold refrigeration of the hidden feelings, if still left. The delineation of the lis by the Family Judge must reveal the awareness and balance. Dilatory tactics by any of the parties has to be sternly dealt with, for the Family Court Judge has to be alive to the fact that the lis before him pertains to emotional fragmentation and delay can feed it to grow. We hope and trust that the Family Court Judges shall remain alert to this and decide the matters as expeditiously as possible keeping in view the objects and reasons of the Act and the scheme of various provisions pertaining to grant of maintenance, divorce, custody of child, property disputes, etc. While dealing with the relevant date of grant of maintenance, in Shail Kumari Devi and another v. Krishan Bhagwal Pathak alias Kishun B. Pathak[9], the Court referred to the Code of Criminal Procedure (Amendment) Act, 2001 (Act 50 of 2001) and came to hold that even after the amendment of 2001, an order for payment of maintenance can be paid by a court either from the date of order or when express order is made to pay maintenance from the date of application, then the amount of maintenance may be paid from that date, i.e., from the date of application. The Court referred to the decision in Krishna Jain v. Dharam Raj Jain[10] wherein it has been stated that to hold that, normally maintenance should be made payable from the date of the order and not from the date of the application unless such order is backed by reasons would amount to inserting something more in the sub-section which the legislature never intended. The High Court had observed that it was unable to read in sub-section (2) laying down any rule to award maintenance from the date of the order or that the grant from the date of the application is an exception. The High Court had also opined that whether maintenance is granted from the date of the order or from the date of application, the Court is required to record reasons as required under sub-section (6) of Section 354 of the Code. After referring to the decision in Krishna Jain (supra), the Court adverted to the decision of the High Court of Andhra Pradesh in K. Sivaram v. K. Mangalamba[11] wherein it has been ruled that the maintenance would be awarded from the date of the order and such maintenance could be granted from the date of the application only by recording special reasons. The view of the learned single Judge of the High Court of Andhra Pradesh stating that it is a normal rule that the Magistrate should grant maintenance only from the date of the order and not from the

date of the application for maintenance was not accepted by this Court. Eventually, the Court ruled thus: -

"43. We, therefore, hold that while deciding an application under Section 125 of the Code, a Magistrate is required to record reasons for granting or refusing to grant maintenance to wives, children or parents. Such maintenance can be awarded from the date of the order, or, if so ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary. No special reasons, however, are required to be recorded by the court. In our judgment, no such requirement can be read in sub-section (1) of Section 125 of the Code in absence of express provision to that effect." In the present case, as we find, there was enormous delay in disposal of the proceeding under Section 125 of the Code and most of the time the husband had taken adjournments and some times the court dealt with the matter showing total laxity. The wife sustained herself as far as she could in that state for a period of nine years. The circumstances, in our considered opinion, required grant of maintenance from the date of application and by so granting the High Court has not committed any legal infirmity. Hence, we concur with the order of the High Court. However, we direct, as prayed by the learned counsel for the respondent, that he may be allowed to pay the arrears along with the maintenance awarded at present in a phased manner. Learned counsel for the appellant did not object to such an arrangement being made. In view of the aforesaid, we direct that while paying the maintenance as fixed by the learned Family Court Judge per month by 5th of each succeeding month, the arrears shall be paid in a proportionate manner within a period of three years from today.

Consequently, the appeal, being devoid of merits, stands dismissed.

.....J.

[Dipak Misra] .....J.

[V. Gopala Gowda] New Delhi;

July 15, 2014.

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[1] (1987) 1 SCC 624
[2] (1991) 2 SCC 375
[3] (1996) 4 SCC 479
[4] (2008) 2 SCC 316
[5] (1978) 4 SCC 70
[6] (2005) 3 SCC 636
[7] 2013 (3) SCALE 561
[8] (2003) 4 SCC 166
[9] (2008) 9 SCC 632
[10] 1992 Cri LJ 1028 (MP)
[11] 1990 Cri LJ 1880 (AP)

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