

Basant Lal Vs. State of U.P.

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Court : Allahabad

Decided On : Feb-08-1995

Reported in : 1996CriLJ69; I(1995)DMC507

Judge : K.L. Sharma, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125 and 125(2)

Appeal No. : Cri. Rev. No. 1362 of 1994

Appellant : Basant Lal

Respondent : State of U.P.

Advocate for Def. : Virendra Singh, A.G.A.

Advocate for Pet/Ap. : V.K. Birla, Adv.

Disposition : Revision dismissed

Judgement :

K.L. Sharma, J.

1. This is a criminal revision directed against the judgment and order dated 10.8.1994 passed by Judge Family Court, Agra in Criminal Case No. 548 of 1991, whereby an application of the opposite party Smt. Baby under Section 125 Cr.P.C. was allowed and she was granted maintenance at the rate of Rs. 500/- per month.

2. I have heard Sri V.K. Birla learned Counsel for the revisionist as well as learned Counsel for the contesting opposite party No. 2 Sri Virendra Singh.

3. On 16.7.1991 the opposite party No. 2 Smt. Baby filed an application under Section 125 Cr.P.C. in the Family Court at Agra. She alleged that she had been married with the revisionist according to Hindu custom on 15.2.1990. But the revisionist Basantal was not satisfied with the dowry received at the time of his marriage and demanded more dowry and on refusal he used to beat her wife Smt. Baby and showed cruel behaviour against her and neglected her even in the matter of providing proper clothes and proper food and treatment. On 8.4.1991 she was forced to get out of his house, she was left in her state of illness at the house of her parents and thereafter he totally neglected her and was never ready to take her back. She therefore claimed maintenance at the rate of Rs. 1000/- per month on the ground that she was not able to maintain herself and the husband was having sufficient means and business earning about a sum of Rs. 4000/- per month. This application was contested by the opposite party who filed a written statement; but admitted the alleged fact of marriage. He however denied the allegation of demand of dowry, cruel behaviour and neglect. He had offered to take her back.

4. After recording evidence and hearing the learned Counsel for the parties, the learned Judge clearly recorded the findings of fact to the effect that the husband was not at all ready to keep his wife with him and he has not only neglected her but has also treated her with cruelty. The Learned Judge has further recorded a finding that the husband has got sufficient means of income so as to pay her maintenance allowance at the rate of Rs. 500/- per month. However the Learned Judge directed the payment of the maintenance allowance with effect from 16 7.1991 the date of application filed under Section 125 Cr.P.C.

5. The learned Counsel for the revisionist submitted that the findings of fact recorded by the Learned Judge are not at all justified by the evidence on record as the Learned Judge has wrongly disbelieved the evidence adduced on behalf of the husband. I have gone through the judgment recorded by the Learned Judge. I find that he has properly discussed the evidence of both parties. The view taken by the

Learned Judge can not be substituted by the view of the superior Court on a fresh appraisal of the evidence on record. The findings recorded by the Learned Judge are based on evidence and are justified by the evidence on record. I have no reason to say that the findings recorded by the Learned Judge are not proper. Therefore no interference is called for with the findings of fact recorded by the Learned Judge after his appraisal of the evidence on record.

6. The learned Counsel for the Revisionist has further submitted that the impugned order of the Learned Judge directing the husband to pay maintenance allowance with effect from the date of the application is not supported by any reasons and it is therefore illegal and should be modified by substituting the date of the order for the purposes of making payment of the maintenance allowance. In support of his submission he has invited attention to the decision of this Court in the case of Dharmendra Kumar Gupta v. smt. Chandra Prabha Devi (1990 JIC 773), 1990 Judicial Interpretation on Crime Page 773; and another decision of this Court in the case of Harpal v. Smt. Meena Devi and Anr. (1993 JIC 378). 1993 Judicial Interpretation on Crimes, page 378.

7. Mr. Virendra Singh learned Counsel appearing for opposite party No. 2 has replied that the reason for granting maintenance for the date of the application is obvious from a perusal of the judgment of the learned Court below and the delay in the disposal of the case cannot be attributed to the neglected lady who has been granted maintenance allowance from the date of her demand. He further submitted that the order of maintenance does not become illegal merely because the Learned Judge has not recorded express reasons for granting maintenance from the date of the application. He has also submitted that the provisions contained in Sub-section (2) of Section 125 Cr.P.C. is not mandatory and is only directory but in any way it cannot take away the substantive right of the neglected woman to get her maintenance from the date of her demand. In support of his submission, he has also place reliance on the decision of this Court in the case namely Satish Chandra Gupta v. Smt. Aneeta and Ors., 1994 (31) Part-8, Allahabad Criminal Cases (H C.) page 563. He has further referred to the two decisions of Madhya Pradesh High Court in the case namely Mahadev Bangala v. Smt. Shanta Bangala and Anr. Vol.-VI 1993(2) Crimes, page 530 and another

case namely Smt. Oml Devi v. Hanmat Singh and Anr., Punjab and Haryana High Court, 1994(2) ACC page 749.

8. I have carefully gone through the judgments referred to herein-above by the learned Counsel on both sides. In the case of Dharmendra Kumar (Supra) it was observed that a bare reading of Sub-section (2) of Section 125 Cr.P.C. makes it clear that ordinary rule is that maintenance to wife is payable from the date of order. , Exception to this ordinary rule is an order making maintenance payable from the date of application. When an exception has to be made in the ordinary rule making the maintenance payable from the date of application by an order, the order, must be supported by a reason or reasons. The Learned Sessions Judge has taken the view that it is the settled principle of law that the amount of maintenance shall be directed to be paid from the date of application and not from the date of the order. This Court had held that in cases where the Magistrate or the Revisional Court order making the maintenance payable from the date of application, the order must be supported by a reason or reason. This decision was recorded barely on the basis of the provisions as contained in Sub-section (2) of Section 125 Cr.P.C. and its legality or otherwise was not examined under Article 11 of the Constitution. In another decision in the case of Haripal (supra) in the absence of any reasons the amount of maintenance was made payable with effect from the date of the impugned order instead of the date of the application. In this case also, the legality or otherwise and the nature of the provisions contained in Sub-section (2) of Section 125 Cr.P.C. was not considered.

9. In the case of Satish Chandra Gupta (supra), this Court considered the import of the provisions contained in Sub-section (2) of Section 25 Cr.P.C. and observed :

'...When the Section 125(2), Cr.P.C. clearly speaks of two options i.e. maintenance shall be payable from the date of order and if so directed from the date of application, both the options are open to the Court. The Legislature has left it to the discretion of the Magistrate to choose any one of the alternatives considering the facts of each case. However, it is not necessary to refer the case of Dharmender Kumar Gupta for reconsideration by a larger Bench for the simple reason that a Revisional Court can always look for reasons itself and in suitable

cases modify the order passed by the Learned Magistrate.'

On the facts of the case under revision, this Court found that the proceedings under Section 125 Cr.P.C. lingered on for nearly five years and Smt. Aneeta was not only feeding the mouths of her children in these hard days but also spent money for prosecuting her application under Section 125 Cr.P.C. and it was only after a lapse of so many years when the order granting maintenance was passed. The Court held that the delay in disposal of the proceedings under Section 125 Cr.P.C. is by itself a sufficient ground to grant maintenance to the wife from the date of application and the wife cannot be made to suffer on account of delay in the disposal of application for maintenance.

10. In the case of Mahadev Bangale (supra) the Madhya Pradesh High Court was also considering a criminal revision against an order of maintenance granted to the wife under Section 123 Cr.P.C. from the date, of application. The submission of the learned Counsel for the applicant was made to the effect that the maintenance should have been given from the date of order and this submission was over-ruled by the Hon'ble Single Judge of Madhya Pradesh High Court in the following words :

'...I see no merit in this submission also. Sub-section (2) of Section 125 Cr.P.C. provides that such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance. That discretion is given to the Trial Magistrate to pass the order of maintenance from the date which he deems fit. It was not obligatory for the Court to give reason why the maintenance is ordered to be paid from the date of the application or of the order as the case may be. The only limitation is that such payment cannot be ordered before the date of application. The fact that after getting the another wife the applicant had given cruel treatment to his first wife. The lower Revisional Court's order granting the maintenance not from the date of order but from the date of application cannot be said to be unjustified or illegal. I see no reason to interfere in the discretion exercised by the lower Revisional Court.'

The Madhya Pradesh High Court interpreted Sub-section (2) of Section 125 Cr.P.C. as directory and not obligatory.

11. In the case of Smt. Omi Devi (supra) the question for granting maintenance allowance to the wife also came up for consideration. The application under Section 125 Cr.P.C. was filed in the year 1984 but it was decided in 1988. It was found that there was no negligence or reason for delay on her part. Following the earlier decision of Punjab and Haryana High Court, in the case of Shri Gwrupartap Singh v. Smt. Satwant Kaur, 1991(1) Recent Criminal, Rulings, 40 it has been held that it is not necessary to record special reasons for granting maintenance with effect from the date of the application.

12. After a careful examination of the cases cited on behalf of both sides, it appears that it is now apparent that the provisions of Sub-section (2) of Section 125 Cr.P.C. have not been held to be mandatory or obligatory and the special reason for granting maintenance allowance from the date of the application have also not been considered necessary, if the disposal of the proceedings itself makes out a prima facie case for delay without any fault on the part of the lady. The cases in which this Court has held that the reasons should be recorded expressly have been consistently followed. However, it was never considered whether the provisions contained in Sub-section (2) of Section 125 Cr.P.C. were ultra vires on the touch stone of reasonableness as enshrined under Article 14 of the Constitution of India. The orders of maintenance granted by the lower Court have been challenged in this Court frequently on the ground that the order of maintenance with effect from the date of the application is illegal and is liable to be quashed. It appears therefore necessary to examine the legality or otherwise of the provisions contained in Sub-section (2) of Section 125 Cr.P.C. I therefore proceed to do so in this case.

Sub-section (2) Section 125 Cr.P.C. reads as follows :

'(2) Such allowance shall be payable from the date of the order, or, if so ordered; from the date of the application for maintenance.'

The language of the provisions aforesaid strikes my mind that the Draftsman of this Code has committed an obvious mistake by sheer inadvertence. He has reversed the position which should have been that such allowance shall be payable from the date of the application for maintenance or if for special reasons

to be recorded from the date of order of the Court. The claim for maintenance is a substantial right of the persons mentioned in Sub-section (1) of Section 125 Cr.P.C. It arises from the date when the person having sufficient means and legally liable to maintain, neglects or refuses to maintain. True, if the Claimant does not himself or herself initiate proceedings before the Competent Magistrate for grant of maintenance, no maintenance can be granted for the period during which such claim has not been made. It is but natural because even the mother does not provide milk to her child without the latter crying. The claim under any existing law are enforced normally only from the date of the receipt of application or the claim having been preferred but once a claim arising out of a legal right or obligation has been presented to a Competent Authority under the law, it becomes payable from the date of the claim itself. If there is anything special to deny the claim from that date of demand, special reasons will be required to be recorded. But here the impugned provision contained in Sub-section (2) of Section 125 Cr.P.C. reverses the general proposition of law and the nature. This provision appears to me to be opposed to good conscience, equity and fair play.

13. The claimant cannot be made to suffer for any act or omission on the part of any Court or any authority without any fault on the part of the claimant. If the Court or the authority does not or fails to discharge its statutory duty, the claimant cannot suffer for the period or failure of such statutory duty. In the proceedings for maintenance under Section 125 Cr.P.C. the claimant in the helpless condition and circumstances prays for grant of maintenance but if the Magistrate or the Court takes long time in serving the notice of the proceedings on the opposite party or the latter neglects the proceedings or the Court prolongs the proceedings for one or the other reason, the applicant cannot be made to suffer. He or she has no control over the conduct and disposal of the proceedings under Section 125 Cr.P.C. The husband always adopts dilatory tactics to avoid his liability and also takes other proceedings to thwart the claim of the wife. The experience of the cases coming up before the Court shows that the husbands have started denying even the basic fact of their marriage with the wife and in some cases they have instituted proceedings for restitution of conjugal rights without any intention on their part to keep the wife together but only to dispute her claim for a reasonable cause to live separately. If all these objections pleas have to be adjudicated

detailed evidence has to be given before the Court or the Magistrate, unnaturally it would delay the disposal of the proceedings. The Court or the Magistrate may also omit to record reasons while granting application for maintenance from the date of application. The claimant cannot be in a position to dictate the terms to the Court or to give directions to the Court how to write a judgment and order or what to write in the order so as to make it operative from the date of the application. If these circumstances, a legal claim justified by evidence is granted with effect from the date of the order, pursuant to Sub-section (2) Section 125 Cr.P.C. by the Court or the Magistrate, it pricks judicial conscience, equity and fairplay to deny the payment of maintenance to the lady from the date of her application. It is for these reasons that this Court and the Madhya Pradesh High Court have in the cases referred to above held that the recording of special reasons is not essential for granting maintenance from the date of the application.

14. There is no doubt that there is a presumption in favour of the constitutionality of an enactment and therefore a provision of law cannot be struck down as discriminatory or arbitrary, if any state of facts may reasonably be conceived to justify it. The Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived as existing at the time of the legislation but where the statute shows on the face of it that the legislature made a classification without any reasonable basis and without any nexus to the object to be achieved by the provision, the presumption of reasonableness in favour of the legislature is instantly rebutted, where the classification made by the legislature is patently arbitrary, and the person challenging the statute cannot be called upon to adduce further or external evidence to discharge his onus. In such a case the presumption of constitutionality is of no avail and the Court is bound to invalidate the statute as violating the guarantee of equal protection.

15. It is true that generally a person who has been aggrieved by the discrimination alleged, can challenge the validity of a law on the ground of violation of Article 14. But in an action or proceeding where the law or a particular provision thereof is pleaded to challenge the validity of an order, the person in whose favour the order subsists and who can be aggrieved or adversely affected, if the plea is accepted,

can also challenge the validity of the law of the provision thereof on the ground that it is ultra vires being violative of Article 14 of the Constitution. In the present case the opposite party No. 2 was granted maintenance allowance at the rate of Rs. 500/- per month in the proceedings under Section 125 Cr.P.C. from the date of an application. This order of maintenance made payable from the date of the application has been challenged by the husband on the ground that it is contrary to the provisions of Sub-section (2) of Section 123 Cr.P.C. It is only by way of defence that the learned Counsel for opposite party No. 2 submitted that this provision which is pleaded by the husband in his favour to challenge the date of the payment of the maintenance allowance that this provision is itself ultra vires and is of no consequence to the husband. In my opinion the contesting opposite party who is likely to be adversely affected by the application of the law violating Article 14 of the Constitution is entitled to challenge its validity even by way of defence in such circumstances.

16. The provision of Sub-section (2) of Section 125 Cr.P.C. is on its face unreasonable and arbitrary and makes arbitrary discrimination without any nexus to the object of law. The Legislature had in its wisdom conceived of making a provision to grant equal and speedy justice to the wife or other dependents and made a provision for summary proceedings for the grant of maintenance allowance. But this provision contained in Sub-section (2) of Section 125 Cr.P.C. appears to have been inadvertently made because there does not appear to be reasonable basis for depriving the wife or other dependents of their right to get the maintenance allowance right from the date of the application in the first instance. This provision makes it exceptional leaving to the discretion of the Court without any specific guideline. The provision for granting maintenance from the date of the order appears to be unreasonable and unfair and on its face it looks arbitrary. As I have already explained in the foregoing paragraphs, the date of order cannot be the correct basis for deciding the date of payment of maintenance. The claimant cannot be prejudiced on account of the delay in the disposal of the proceedings for any reason whatsoever. The claimant asserts her right or maintenance payable under law the moment so files an application for maintenance. The law which actually intended to give quick and instant relief to the neglected dependent, cannot have the object of defeating it by the creating such a classification that in

some cases the maintenance may be made payable from the date of application and in some cases from the date of the order. All the claimants equally placed should not be denied equal protection of law and cannot be arbitrarily discriminated just on the whim of the Court or the Presiding Officer of the Court. In order to eliminate the rigour of this arbitrary and unreasonable provision some of the Courts have considered in their wisdom the need of recording the reasons by the Court concerned for granting the payment of maintenance allowance from the date of the application. This has also not in effect advanced the cause of the claimant because the Courts can neglect to record reason without any fault on the part of the claimant. If the Court does not record reasons in its judgment for ordering the payment of maintenance allowance from the date of the application, the Claimant cannot be made to suffer or be prejudiced by the inadvertence or neglect of the Presiding Officer of the Court. Moreover the absence of reasons for ordering the payment of maintenance from the date of the application cannot justify denial of the rightful and lawful claim for maintenance from the date of the application which vested in the claimant under the law. Therefore there appears to be no alternative except to strike down this obnoxious, unreasonable, arbitrary and unfair contained in Sub-section (2) of Section 125 Cr.P.C. I. therefore, clearly hold and declare that Sub-section (2) of Section 125 Cr.P.C. is ultra vires of Article 14 of the Constitution of India and it cannot be pleaded as a ground to challenge the validity of the order of maintenance directing its payment from the date of the application.

For the aforesaid reasons, I reject the submissions made by the learned Counsel for the revisionist and find that the impugned order of maintenance is perfectly legal and proper which does not call for interference. Consequently the revision is hereby dismissed with costs assessed at Rupees one thousand Rs. 1000/-) payable to the opposite party No. 2 Smt. Baby within 30 days from the date of the delivery of this judgment.