

Keshaba Patra Vs. Jamuna Patra and ors.

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Court : Orissa

Decided On : Apr-12-1996

Reported in : I(1997)DMC56

Judge : A. Pasayat, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125 and 127

Appeal No. : Criminal Revision Nos. 272, 273 and 274 of 1995

Appellant : Keshaba Patra

Respondent : Jamuna Patra and ors.

Advocate for Def. : B.K. Nayak, ;A.K. Das and ;Sabitri Ratho, Advs.

Advocate for Pet/Ap. : S.C. Mohapatra, ; D. Mohanty and ; P.C. Das, Advs.

Judgement :

A. Pasayat, J.

1. These three revision applications are taken up together as they are interlinked.
2. Petitioner Keshab Patra is the husband of Jamuna Patra, and father of Puspanjali and Saraswati, opp. parties in die applications. A monthly maintenance of Rs. 300/-had been granted in favour of Jamuna, Puspanjali and Saraswati in terms of Section 125 of the Code of Criminal Procedure, 1973 (in short, 'the

Code'). Application was filed by each of them for enhancement in terms of Section 127 of the Code. Learned Judge, Family Court, Rourkela (in short, 'the Family Court') accepted the prayer and enhanced the quantum to Rs. 500/- per month. Such enhancement is the subject-matter of challenge in each application.

3. Stand of the petitioner Keshab in support of the revision applications is two-fold. Firstly, it is stated that the alteration in allowance as directed was without any material. The essential ingredient for such enhancement i.e. change of circumstances has not been established. Secondly, it is submitted that Puspanjali and Saraswati have attained majority, and therefore are not entitled to any maintenance. In support of the second stand, reliance is placed on a decision of this Court in Upendra Mohapatra v. Smt. Kanchanbala Mohapatra and Ors., (1995) 9 OCR 15.

4. Miss. Sabitri Ratho, learned Counsel appearing for Jamuna, Puspanjali and Saraswati submitted that keeping in view the object for which Section 127 of the Code has been enacted, the Court has to consider while dealing with an application for alteration, whether the circumstances warrant increase in the allowance. It is highlighted that the cost of living is going up by leaps and bounds of which judicial notice can be taken, fixation of Rs. 300/- per month was done in the year 1990, and considering these relevant aspects the Family Court has directed increase of the quantum.

5. So far as Puspanjali and Saraswati are concerned, it is stated that mere fact of their having attained majority shall not affect their entitlement.

6. In order to appreciate the rival submissions, it is necessary to take note of Section 125 of the Code. Clauses (b) and (c) of Sub-sec. (1) of the said section are relevant for the purpose of adjudication of this case. They read as under :

'125. Order for maintenance of wives, children and parents-

(1) If any person having sufficient means neglects or refuses to maintain :

(a) xxxx xxxx xxxx (b) his legitimate or illegitimate minor child whether married or not, unable to maintain itself; or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself; or xxxx xxxx xxxx'

Legitimate or illegitimate minor child, whether married or not is entitled to maintenance in case it is unable to maintain itself. In case of legitimate or illegitimate child (not being a married daughter), who has attained majority, liability to pay maintenance arises only where the child in question is, by reason of any physical or mental abnormality or injury unable to maintain itself.

7. It was not the case of claimants that Puspanjali and/or Saraswati had any such physical or mental abnormality or injury. On their attaining majority, they are disentitled to maintenance. Therefore, the order of the learned Judge, Family Court, who had noticed that Saraswati was aged about 22 years at the time of disposal of the case and Puspanjali was aged 20 years is vulnerable. So far as they are concerned, there is no indication about their claim on account of physical, or mental abnormality or injury. It is, however, not in dispute that they are entitled to the maintenance, as was granted to them in 1990, till they attained majority.

8. So far as the question whether the circumstances warranted a change is concerned, it is to be noted that Section 127 provides that on consideration of proof of a change in the circumstances for making alteration of the allowance, it can be directed. I find that the learned Judge, Family Court has taken note of high cost of living and has also taken note of passage of time to fix the quantum of maintenance at Rs.500/-. Section 127 contemplates cases where there is a change in the financial circumstances of the person affected. Sub-sec. (1) deals with alteration in maintenance allowance as a result of change in the circumstances. Sub-sec. (2) deals with cancellation or variation of the maintenance order in consequence of any decision of a Civil Court. Change in the circumstances means change in the existence of the circumstances, and not change in proof of circumstances. What is important is the change in the pecuniary or other circumstances in the party paying or receiving the allowance, which would justify an increase or decrease of the amount 'if the monthly payment originally fixed. One of the circumstances which governs award of maintenance obviously is the cost of

living and if cost of living has gone up, there is a change in the circumstances of the wife, which enables her to ask for enhancement of maintenance. While dealing with the question whether increase in cost of living is a change of circumstances necessitating increase the object of enacting Section 125 has to be kept in view.

9. The underlying purpose is to alleviate distress of neglected relations like wives, children and parents and to save them from vagrancy. The provision has been enacted to enable a discarded wife or a helpless child to get the much needed and urgent relief in one or other of the three forums convenient to them. The proceedings are of a summary nature. In that background, it is imperative that the words used in the provision shall be liberally construed without doing any violence to the language. See *Jagir Kaur v. Jaswant Singh*, AIR 1963 SC 1521, a decision rendered in the context of Section 428 of 1898 Code. The provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Art. 15(3) reinforced by Art. 39. The brooding presence of the constitutional empathy for the weaker section like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out the interpretation out of the two alternatives which advances the cause of the derelicts. (See *Capt. Ramesh Chandra Kaushal v. Mrs. Veena Kaushal and Ors.*, AIR 1978 SC 1807. Sir James Fit James Stephen who piloted the Code of 1972 described the precursor of Chapter IX of the Code in which Section 125 occurred as a mode of preventing vagrancy or at least of preventing its consequences.

10. Conclusions of the learned Judge, Family Court cannot be said to be unreasonable to warrant interference while exercising the revisional jurisdiction. It is stated that there are arrears which were to be paid by the petitioner Keshab, which have not been paid. Learned Counsel for petitioner disputes the statement. It is directed that the arrears if any shall be paid by 15th June, 1996, in addition to the monthly maintenance granted by the Family Court to Jamuna. It is stated by Miss Ratho that if Puspanjali and Saraswati claim maintenance on the ground of physical or mental abnormality or injury, an appropriate application shall be filed before the Family Court. If such contingency arises, the application if any filed, shall be considered in accordance with law. I express no opinion on their.

acceptability on merits.

The revision applications are accordingly disposed of. Urgent certified copy of the order on proper application shall be granted by Tuesday (16.4.1996).

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