Bano Vs. Abdul Salam

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Court : Rajasthan

Decided On : Aug-06-1980

Reported in : 1980WLN426

Judge : S.N. Deedwania, J.

Appeal No. : S.B. Criminal Revision No. 95/1980

Appellant : Bano

Respondent : Abdul Salam

Disposition : Petition dismissed

Judgement :

S.N. Deedwania, J.

1. Petitioner Mst. Bano has preferred this revision against the order, dated March 11, 1980 passed by the learned Sessions Judge, Jodhpur in criminal revisions No. 108 of 1979 and 116 of 1979.

2. Briefly stated the facts for disposal of the petition are these. Petitionner Mst. Bano was married to non-petitioner Abdulsalam on 8-1-75 On 14-6-77 Abdul salam turned out Mst. Bano from his house. Since, then, Mst. Bano and her minor son have been living with her parents. On 24-1-79, she filed a petition under Section 125 of the Code of Criminal Procedure (hereinafter referred to as 'the

Code') for maintenance and claimed a sum of Rs. 300/- per month for herself and her minor son Non-petitioner Abdulsalam contested the application inter alia on the ground that on 12-2-80, he gave customary divorce to Mst. Bano and paid her a sum of Rs. 25/- as Maher and, therefore, she was not entitled to any maintenance. The application for interim maintenance by the petitioner was opposed mainly on the ground that there was no provision in the Code to grant the same. The learned Additional Munsif and Judicial Magistrate, No. 1, Jodhpur allowed the application of the petitioner for interim maintenance and granted a sum of Rs. 100/ per month pendente-lite as interim maintenance. The learned Additional Munsif and Judicial Magistrate, No. 1, Jodhpur was of the view that the proceedings under Section 125 of the Code were civil in nature and, therefore, under inherent powers of the court, the petitioner could be granted interim maintenance notwithstanding the fact that there was no such provision in the Code. Aggrieved by the order of the learned Magistrate, the husband filed revision petition No. 109 of 1979 and the wife filed revision petition No. 116 of 1979 for enhancement of interim maintenance. The learned Sessions Judge took the view that a sub-ordinate criminal court did not possess any inherent powers and, therefore, interim maintenance could not be granted under Section 125 of the Code. He accepted the revision of the non-petitioner and dismissed the application of the petitioner for grant of interim maintenance. The revision filed by the petitioner was naturally dismissed. Both the revisions were disposed of by one order. Mst. Bano by this revision has challenged the orders of the learned Sessions Judge, Jodhpur relating to both the revisions.

3. I have heard the learned Counsel for the parties & perused the record of the case carefully.

4. A preliminary objection was taken by the learned Counsel for the non-petitioner that this revision was not maintainable in view of Section 397(3) of the Code. I have considered the argument carefully. No doubt, Mst. Bano could not prefer further revision application against that part of the order, which disposed of her revision petition No. 116 of 1979 because of the specific bar contained in Section 397 of the Code that if an application has been made by any person to the High Court or to the Sessions Judge, no further application by the same person shall be

entertained by the other of them. However the same could not be said, with regard to the order relating to revision petition No. 139 of 1979 preferred by husband Abdulsalam because the petitioner was not precluded by Section 397(3) of the Code from filing a revision to this Court. The fact that both the revisions were disposed of by one order would not affect this position I, therefore, overrule the preliminary objection, so far as, it relates to she order passed in revision petition No. 109 of 1979 of the husband and uphold the preliminary objection with regard to that part of the order, which was passed in relation to the revision petition No. 116 of 1979 filed by the petitioner.

5. It was not disputed before me by the learned Counsel for the petitioner that the Code does not confer any inherent powers upon sub-ordinate criminal courts. Section 482 of the Code confers these powers on the High Court alone.

6. However, it is strenuously argued by the learned Counsel for the petitioner that where a power is conferred by statute it is reasonable to hold that it carries with it, the power of doing all such acts as are reasonably necessary for its execution in the absence of any express prohibition. In short, the argument is based on legal maxim 'quando lax aliquid concedit concedere videtur at illud sine quo res ipsa case potest.'

7. On the other hand, the learned Counsel for the non-petitioner argued that where mode of discharging a power is laid down by law, it must be performed in that mode or not at all. The agrument is based on maxim-'expressio unius ast exclusio alterius.' I have considered the rival contentions care fully. Both the maxims are well settled and difficulty lies in their application to a particular provision of law. It was thus observed in Income-Tax Officer, Cannanore v. M.K. Mohammed Kunhi A.I.R. 1969 S.C. 430:

It is a firmly established rule that an express grant of statutory power curies with it by necessary implication the authority to use all reasonable means to make such grant effective (Surtheland Statutory Construction, Third Edition Articles 5401 and 5402 The powers which have been conferred by Section 254 on the Appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of

those powers fully effective. In Domat's Civil Law, Cushing's Edition, Vol. 1 at page 88, it has been stated.

It is the duty of the Judges to apply the laws, not only to what appears to be regulated by their express dis-positions but to all the cases where a just application of them may be comprehended either within the consequences that may be gathered from it.

Maxwell on Interpretation of Statutes, Eleventh edition contains a statement at p. 350 that' where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution. Cui juris-dicticdate est, ea quoqe cor ceasa case vinderture sine quibue jurisdictio explisary non potruit An instance is given based on Ex. Parte, Martin (1879) QBD 212 at p 491 that 'where an inferior court is empowered to grant an injunction, the power of punishing disobedience to it by commitment is impliedly conveyed by the enactment, for the power would be useless if it could not be enforced.

The same view is expressed in (1) Matajog Dobay v. H.C. Bhari : [1955]28ITR941(SC) and (2) Assistant Collector of C.E. v. N.T. Co. of India Ltd.) : 1978(2)ELT416(SC) . On the other hand, it was thus held in Ramchandra Keshav Adke (Dead) by Lrs. v. Govind Joti Chavre and Ors. : [1975]3SCR839 :

A century ago, in Taylor v. Taylor (1875) 1 Ch. D. 426 Jessel M.R. adopted the rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time. It was applied by the Privy Council, in Nazir Ahmed v. Emporer 63 Ind. App. 372-AIR 1936 PC 253(2) and later by this Court in sevral cases, Shiv Bahadur Singh v. State of V.P. (1954) SCR 1096 AIR 1934 SC 322 1954 Cr. L J, 910, Deep Chand v. State of Rajasthan : [1962]1SCR662 to a Magistrate making a record under Section 164 and 364 of the Code of Criminal Procedure, 1898 This rule squarely applies 'Where, indeed, the whole aim and object of the legislature would be painly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other. Maxwell's Interpretation of Statutes, 11th Edn. pp. 362 363.

8. I have considered the aforesaid authorities carefully No doubt, the maxim 'expressio uniue est exclusio alterius, is a valuable servant but a dangerous master and is sub-servient to the basic principle that the courts must endeavour to ascertain the legislative intent. Generally, any grant of statutory power carries with it by implication, the authority to use all reasonable means to make it effective. The question whether is or is not an implied power to grant interim maintenance in case under Section 125 of the Code would, therefore, depend upon the legislative intent and the fact whether the power granted under Section 125 of the Code can not be exercised at all without the incidental power to giant interim maintenance. The Code of Criminal procedure is a fairly exhaustive Code. Section 125 of the New Code or Section 488 of the old Code did not contain any procedure for grant of interim maintenance pendente lite. If the legislature really intended to confer such a power to grant interim maintenance in a case under Section 125 of the code it could have expressly conferred such powers upon the courts, when the old Code of 1896 was replaced by the New Code of 1973 However, no such provision was made. Upon perusal of Section 125 of the Code, it is evident that specific procedure is laid down for the discharge of the power to decide an application under Section 125 of the Code. The provision for the wife to get maintenance from her husband by making an application under the Code of Criminal Procedure was enacted fairly long back, but the necessity for making a provision for grant of interim maintenance was never felt. I am yet to come across a case, where such a right of wife to claim interim maintenance was recognised by the courts. The reason appears to be that it was intended that an application under Section 488 of the Old Code or under Section 125 of the Code should be disposed of expeditiously, so the provision for granting interim maintenance was not considered necessary. The Criminal Procedure Code is a fairly exhaustive Code and incorporates the provisions relating to grant of interim reliefs or for making interim orders wherever it was considered necessary. If the legislature really intended to confer such a power for grant of interim maintenance to the courts, a specific provision could have been made. In my opinion, the doctrine of implied powers should not be too readily invoked, while interpreting statutory provisions of codified law of procedure like the Code, which is fairly exhaustive. In such cases, legislative intent is prohibition by necessary implication. Further the doctrine of

implied powers can only be invoked when power as conferred on an authority by a statute can not be exercised at all in the absence of some implied incidental powers. It can hardly be said that the courts can not exercise the power to grant maintenance under Section 125 of the Code without the implied power to grant interim maintenance. Consequently, it can not be said that the implied power to grant interim maintenance can be inferred by legislative intent. I am, of the view that rule of prohibition by necessary implication applies and under Section 125 of the Code, a Court has no power to grant interim maintenance.

9. In the result, the revision petition is dismissed.