

Madhya Pradesh High Court

Saroj Bai vs Jai Kumar Jain on 11 August, 1994

Equivalent citations: II (1995) DMC 589

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Bench: U Bhat, M Tamaskar, R Awasthy

JUDGMENT U.L. Bhat, C.J.

1. Petitioner in Criminal Revision No. 346 of 1994, (who is a respondent in M.Cr.C. No. 3162 of 1994) is the wife of the respondent therein, who is the petitioner in M.Cr.C. No. 3162 of 1994. In 1982, the wife filed an application under Section 125 of the Code of Criminal Procedure, 1973 (for short the Code) seeking an order directing the husband to pay her maintenance allowance of Rs. 200/- per month, alleging that though he has means to maintain her, he has neglected to do so. The husband denied that she was entitled to separate maintenance. The Judicial Magistrate, First Class, Raghogarh, on consideration of evidence passed an order on 13.4.1987, allowing the application and directing the husband to pay maintenance at the rate of Rs. 200/- per month from 19.1.1982, the date of application till December, 1986. The husband filed revision in the Sessions Court, Guna which allowed the revision in part, reducing the quantum of maintenance from Rs. 200/- to Rs. 50/- per month. The wife aggrieved by the reduction in the rate of maintenance has filed the revision and the husband, being aggrieved by the direction requiring him to pay maintenance from the date of application, has filed the application under Section 482 of the Code.

2. Hon. K.K. Verma, J. who heard both the cases, noticed contrary decisions of this Court on the question of interpretation of Section 125(2) of the Code and referred the case to a larger Bench. That is how these cases have come before us.

3. Learned Magistrate found that the husband is working as a Clerk in a Cloth Shop at Guna and earning Rs. 400/- per month and by another order of the Court, he was paying Rs. 75/- per month to his parents. Sessions Court found the wife has been working in Anganwadi since January, 1987. It was in these circumstances that maintenance has been ordered to be paid from the date of application till December, 1986. Having regard to the facts and circumstances of the case, we do not find any ground to interfere with reduction in the quantum ordered by the Sessions Court. The wife did not challenge before Sessions Court the direction of the learned Magistrate that the maintenance is to be paid only till the end of December, 1986. The only controversy before us relates to the date from which maintenance is payable.

4. In *Lachhamani v. Ramu*, 1983 Crimes 590 : Criminal Reference 405/82, claim was made on behalf of the minor daughter against her father. The Magistrate allowed maintenance from the date of application and that was altered by the Sessions Judge who directed maintenance to be paid only from the date of order. M.D. Bhat, J. held that Section 125(2) of the Code makes it clear that the grant of allowance is normally to be from the date of order and in case the normal rule is not intended to be followed, the Court may grant allowance from the date of application, but such order should be supported by reasons. Learned Judge also indicated that the case was pending for more than five years before the Magistrate and the father would have to pay a substantial amount to clear the arrears which would cause him great hardship. In these circumstances, the alteration made by the Sessions Court was sustained. In *Mohd. Inayat Ulla Khan v. Salam Banu*, M.Cr.C. No. 97 of 1983 = 1985 MPWN 365--it was observed that there can be no dispute that ordinarily payment of maintenance has to be ordered not from the date of application but from the date of order. This view has been followed in *Rameshwar v. Ramibai*, 1987 Cr.L.J. 1952.

5. The decision in *Gafoor Ahmad v. Amnabai*, 1987 (II) M.P. Weekly Note 142, at page 188, related to a case where the Magistrate dismissed the application but the Sessions Court awarded maintenance to the wife and son from the date of the application. Gyani, J. indicated that through it is a matter of discretion

of the Court, where "retrospective effect" is being given, it has to be supported by reasons. Learned Judge also indicated that Sessions Court should have taken a realistic view of the matter and that since the case was pending for long, it would cause great deal of hardship to the opposite party if arrear is required to be paid. Learned Judge though did not indicate that absence of reasons would vitiate the order, held that since no reasons were indicated, ends of justice would be met if the order is made effective from the date of the disposal of the revision by the Sessions Court. We may indicate, with great respect, that such a date is not contemplated in Section 125(2) of the Code.

6. Next decision referred to is the one in *Babulal v. Mangibai*, 1990 (II) MPWN 138, at page 231. The lower Court ordered maintenance from the date of application without recording reasons. Gyani, J. held that the Court was expected to assign reasons but that though impugned order did not contain reasons, the materials indicated that there were reasons to justify the order and declined to interfere.

7. All the above decisions were considered in *Krishna v. Dharamraj*, 1991 MPLJ 451, by a Division Bench consisting of P.C. Pathak, J. and S.K. Chawla, J. The Division Bench took the view that it is essential to record reasons whether maintenance is to be ordered from the date of application or from the date of order. The Bench further held that failure to state reasons in the order justifying the award of maintenance from the date of application will not vitiate the order since technicalities should not be allowed to frustrate the ends of justice. The Bench also indicated that the mere fact of accumulation of large arrears is hardly a ground to deny the wife the benefit of maintenance from the date of application. The earlier decisions of learned Single Judge taking a contrary view were overruled. This decision was pronounced on 4.1.1991.

8. On 3.4.1991, another Division Bench consisting of Agarwal, J. and Pandey, J. (1991 MPJR 412) without referring to the decision in *Krishna v. Dharamraj*, 1991 MPLJ 451 (supra) held that the language of Section 125(2) of the Code leads to the logical conclusion that when maintenance from the date of application is not ordered, it shall be payable from the date of order, that Chapter IX of the Code does not contain guidelines as to in what cases maintenance is to be ordered from the date of application, that award maintenance from "retrospective date" cannot be left to the wishes or whims and fancies of a Magistrate, that where maintenance is ordered from the date of application Magistrate should record reasons and where reasons are not recorded, the order is vitiated. The Division Bench sought support from the observations of the Supreme Court in *Savitri v. Govind Singh*, [1986(1) All India Hindu Law Reporter 489 (SC)]. The Division Bench also approved the dictum in *Gafoor Ahmad v. Amnabai* (supra), *Mohd. Inayat Ulla Khan v. Salam Banu* (supra), *Lachhamani v. Ramu* (supra) and *Babulal v. Mangibai* (supra) without reference to the decision in *Krishna's case* (supra) which overruled them.

9. Section 125 of the Code deals with order for maintenance of wife, children and parents who are unable to maintain themselves and the husband or father or children, as the case may be, having sufficient means neglect of refuse to maintain them. Upon proof of necessary ingredients, the Magistrate may order the person liable to make a monthly allowance for maintenance of the wife, child or parent at such monthly rate not exceeding Rs. 500/- as he thinks fit and to pay the same to such person. Sub-section (2) of Section 125 of the Code reads thus:

"Such allowance shall be payable from the date of the order, or, if so . ordered, from the date of the application for maintenance."

It is interpretation of this provision which has led to the conflict of opinion.

10. Section 125 of the Code is intended to benefit wives, children and parents in distress on account of neglect by husband, parents or children respectively. The provision is intended to alleviate distress, meet the basic needs of neglected relations like wives, children and parents and avoid vagrancy. The underlying purpose is fully consistent with Art. 15(3) of the Constitution of India which states that nothing shall prevent the State from making any special provision for women and children, as also

Article 39 of the Constitution of India which states, inter alia, that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally have the right to an adequate means of livelihood, children are given opportunity to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

11. In *Jagir Kaur v. Jaswant Singh*, AIR 1963 SC 1521, the Court dealing with Section 488 of the Code, 1898 referring to Forum observed :

"Thus in our view, has been designedly done by the Legislature 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 under this section are in the nature of civil proceedings, the remedy is a summary one and the person seeking that remedy, as we have pointed out, is ordinarily a helpless person. So the words should be liberally construed without doing any violence to the language."

12. In *Capt. Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Ors.*, AIR 1978 SC 1807, dealing with the claim of a wife under Section 125 of the Code, the Court observed :

"This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by Courts are not petrified print but vibrant words with social functions of fulfil. The brooding presence of the Constitutional empathy for the weaker sections 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 that interpretation out of two alternatives which advance the cause -- the cause of the derelicts."

13. Sir James Fitz James Stephen who piloted the Code of Criminal Procedure, 1872 described the precursor of Chapter IX of the Code in which Section 125 occurs, as "a mode of preventing vagrancy or at least of preventing its consequences". (See observations in Paragraph 8 in *Mohd. Ahmed Khan v. Shah Bano Begum*, [1985(2) All India Hindu Law Reporter 77 (SC)]. In *Bhagwan Dutt v. Kamla Devi*, AIR 1975 SC 83, the Court dealing with provisions of 1998 Code observed :

"These provisions are intended to fulfil a social purpose. Their object is to compel a man to perform the moral obligation which he owes to society in respect of his wife and children. By providing a simple, speedy, but limited relief, they seek to ensure that the neglected wife and children are not left beggared and destitute on the scrap-heap of society and thereby driven to a life of vagrancy, immorality and crime for their subsistence. Thus, Section 488 is not intended to provide for a full and final determination of the status and personal rights of the parties. The jurisdiction conferred by the section on the Magistrate is more in the nature of a preventive, rather than a remedial jurisdiction; it is certainly not punitive".

14. Long before the Indian Constitution, the Sind High Court in *Hemibai v. Kundibai*, AIR 1940 Sind 222, observed that maintenance should be ordered to be paid from the date of the application and no sympathy can be shown to the husband or the father if he failed to maintain the applicant. This must necessarily be more so in the perspective of the Directive Principles of State Policy referred to earlier and the legislative purpose of the provision which is to help destitute women, children and others.

15. The plain language of the provision makes it clear that if the Court does not specifically indicate the date from which maintenance shall be payable, it should be taken to have been ordered from the date of order. If the order itself indicates that maintenance shall be payable from the date of application or from the date of order, there can be no ambiguity and the parties know from what date the maintenance becomes payable. Ambiguity would arise and parties would be put to difficulty where the order is silent as regards the date from which the maintenance is payable. It is to meet such contingencies that Section

125(2) of the Code lays down that such allowance shall be payable from the date of order. If the provision is only to the effect that it shall be payable from the date of order, there will be no discretion left to the Court to make maintenance payable from the date of application. Therefore, the words following: "if so ordered, from the date of application" have been incorporated. There is another purpose also underlying Section 125(2). That is to fix the outer limit of date from which the order is to take effect. We do not understand Section 125(2), as containing a legislative mandate that the normal rule is to order maintenance from the date of order or it is only exceptionally that maintenance is to be ordered to be paid from the date of application.

16. A wife, child or parent in distress and neglected by the person responsible for his or her maintenance approaches the Magistrate with a plea for relief under Section 125 of the Code. The claim can succeed only if the three ingredients contemplated in the provision exist, namely, that the claimant is unable to maintain herself or himself and the person liable to maintain has means to maintain but has neglected or refused to maintain. The provision is intended to by-pass the dilatory process of a Civil Suit for maintenance. A claimant who has no means to maintain herself or himself and is in distress should not be asked to wait till entire gamut of Civil Court process is gone through. Therefore, the Legislature intended to provide a summary, quick and comparatively cheap remedy for the neglected person. Cases under Section 125 of the Code are expected to be disposed of with all expedition so that if the claim is genuine, relief is granted expeditiously. The concern for the persons in distress is reflected in the decision of the Supreme Court in *Savitri v. Govind Singh Rawat* (supra) where it has been held that the Magistrate in appropriate cases has implied power to pass an interim order of maintenance and that a contrary view is likely to result in grave hardship to the applicant who may have no means to subsist until the final order is passed and any prejudice caused by an interim order to the person against whom it is made is minimal as it can be set right quickly after hearing both the parties.

17. Even in a civil suit for future maintenance, the Court is required to pass a decree for maintenance from the date of the suit. Ordinarily, Courts look to the state of affairs, prevailing on the date of the suit. Where a litigation" is prolonged unduly, either on account of the conduct of the opposite party, or on account of the heavy docket in Court or for other unavoidable reasons, it would be unjust and contrary to the very purpose of the provision to postpone the effectuation of the order to the date of the order. Such postponement deprives the claimant of the benefit of the fruits of a decree which he or she could have obtained through a Civil Court. Looking at the matter from this perspective also, there is justification to say that ordinarily the claimant who seeks an order for maintenance under Section 125 of the Code shall obtain the relief from the date when she or he approached the Court i.e. the date of application and only where there are circumstances justifying a contrary view, it can be postponed to the date of the order.

18. Some of the decisions referred to above which take a contrary view have characterised the order awarding maintenance from the date of the application as an order "with retrospective effect". A misapprehension of the real meaning of the expression 'retrospective' underlies this belief. A direction that the order will take effect from the date of the application does not amount to granting retrospective effect to the order. A claim is made on a particular date and ordinarily the claim is to be considered with reference to the state of affairs as on that day grant of relief with effect from the date of application could be understood as granting relief prospectively and not retrospectively.

19. *Shobha Bai's* case proceeds on the basis that normally or ordinarily an order should take effect from the date of the order and therefore, specific reasons must be indicated in the order in support of a contrary direction. Section 125(2) does not speak of either reasons or special reasons unlike Section 125(3) of the Code which requires reasons for the sentence awarded in the case of conviction for an offence punishable with death or alternatively imprisonment for life or imprisonment for the term of years and special reasons to be recorded in the case of sentence of death. Section 354 lays down what a judgment should contain. It should contain the point or points for determination, the decision therein and reasons for the decision. Whenever a relevant matter is in controversy, the Court should formulate point for determination in regard to the controversy, express its decision thereon and state the reasons for the decision. This applies to all matters in controversy. Looking at the matter from this point of view, the decision regarding the date from which the order is to take effect must be supported by reasons; reasons

are required to be given whether the Court stipulates the date of the application or the date of the order, as the date from which the order is to take effect. It cannot be that the reasons are required to be given only where the Court holds that the order is to take effect from the date of the application reasons have to be given even where the Court postpones the date of the order. Technically speaking, a decision which is not supported by reasons is vitiated, but this does not mean that the decision is void or non est or that the superior Court will necessarily set aside the order on the ground of want of specification of reasons. The superior Court will examine the record which has been called for and see whether the decision is supported by materials available on record and if there are such materials, the Court will decline to interfere. This is particularly so while considering an order passed in exercise of the benevolent jurisdiction under Section 125 of the Code. A decision which does not contain reasons in support of the date chosen for effectuation of the order is certainly, to that extent, irregular and defective. But it is not the function of the Revisional Court to interfere with every such order on the mere ground of absence of reasons stated in the order. The revisional jurisdiction is intended to satisfy the Revisional Court as to the correctness, legality or propriety of the finding of the order or as to regularity of the proceedings of the inferior Court. The Revisional Court is not ordinarily expected to re-appreciate that evidence but in a case where an order of maintenance passed under Section 125 of the Code is irregular in the sense that reasons in regard to the date of coming into force of the order are not mentioned, it is the duty of the Revisional Court to examine the record called for by it to verify whether the order is correct, or legal or proper. With great respect, we agree with the view taken in Krishna's case and hold that the contrary view taken in *Shobhabai v. Radheshyam*, (supra) does not lay down the correct law.

20. Maintenance has been ordered to be paid in the present case from the date of application till December, 1986. The latter date has been chosen because the wife secured employment in the month of January, 1987. It is unnecessary for us to pronounce on the correctness of the outer time limit prescribed in the order since that was not challenged by the wife in the Sessions Court. The wife is aggrieved by the reduction of quantum of maintenance ordered by the Sessions Court from Rs. 200/- to Rs. 50/- per month. Having regard to the low income of the husband, his liability to pay maintenance to his parents and other circumstances of the case, we find no justification to interfere with the reduction so made by the Sessions Courts, though the quantum of maintenance fixed by the Sessions Court is on the lower side. It is not the case of the husband that the delay in passing final order by the first Court was on account of laches of the wife. In such circumstances, it is only just and fair that she is granted maintenance from the date of application. This is particularly so in view of the low quantum of the maintenance fixed. There may be some hardship for the husband in paying the arrears in lump-sum but such hardship is the consequence of husband's conduct in not maintaining the wife and not providing maintenance for her after they separated. The outer time limit fixed for payment of maintenance is end of December, 1986 and the first Court passed the order only subsequently. The question of postponing the date of effectuation of the order to the date of order cannot arise in this case. On the facts also, there is no justification to do so.

21. We, therefore, decline to interfere and dismiss both the cases.