

(1994) 08 AHC CK 0013
In the Allahabad High Court
Case No : Criminal Revision No. 1133 of 1994

Abdul Hanif

APPELLANT

Vs

Smt. Banno Khatoon and Another

RESPONDENT

Date of Decision : 03-08-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 128
Family Courts Act, 1984 — Section 18, 18(2), 7, 7(2), 8

Citation : (1996) AWC 341 Supp

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R.K. Trivedi, J.—Heard counsel for the applicant.

This revision has been filed against the order dated 11th. July, 1994, by which the learned Judge, Family Court has given seven days time to the applicant to pay amount of maintenance.

2. Facts giving rise to this revision are that on 18th October, 1979 the order u/s 125, Code of Criminal Procedure was passed by Munsif Magistrate, Jalaun at Oral and Rs. 300/- was fixed as amount of maintenance and payable to applicant opposite party. For implementation of this order an application u/s 128, Code of Criminal Procedure has been filed before the Judge. Family Court, Jhansi. It is in these proceedings that the impugned order has been passed.

3. Learned Counsel for the applicant has challenged the order passed by the Judge, Family Court on the ground that as order of maintenance was passed against applicant in 1979 it cannot be executed by the Family Court u/s 18 of the Family Courts Act, 1984, hereinafter referred to as "the Act."

4. The second submission of the learned Counsel is that the execution should be filed at the place where the applicant is residing. The reliance has been placed on case of Mazahar Abbas v. Smt. Sakeen (XXII) 1986 ACC 97.

5. I have considered the submission of the learned Counsel for the applicant and in my opinion, both the submissions have no substance. Section 7 of the Act provides that subject to the other provisions of this Act, a Family Court shall also have and exercise the Jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973. Section 7(2)(a) of the Act makes it clear that all the Jurisdiction which may be exercised by Magistrate, shall be exercised by the Family Court. Section 8 of the Act excludes the Jurisdiction of the courts other than Family Court and provides authority and Jurisdiction for the proceedings to the Family Court. The effect of Section 8(b) of the Act is that the Magistrate cannot have the Jurisdiction to entertain application u/s 128, Code of Criminal Procedure. For enforcement of the order of maintenance Section 18(2) is provided. Thus from perusal of Sections 7 and 8 of the Act it is clear that after the Family Court has been established, the Jurisdiction can be exercised only by Family Court, Section 18 of the Act is for execution of decrees and orders passed by Family Court. Now as application has been filed u/s 128, Code of Criminal Procedure, the Family Court will pass orders which may be executed.

6. The next submission of the learned Counsel that the execution can be only where the applicant is residing, is misconceived. In the case relied on by the learned Counsel for the applicant It has been observed that It is evident from the wording of Section 128, Code of Criminal Procedure which lays down the provisions of enforcement of the orders passed u/s 125, Code of Criminal Procedure, that such order can be enforced even at the place where a person is residing. It has been further said that this provision was specifically introduced by the legislature for meeting the situation where the property of the person, against whom the order has been passed, is situated outside the Jurisdiction of the Magistrate passing the order.

7. In my opinion the object of Section 128, Code of Criminal Procedure is that the order of maintenance may be implemented even outside the area of the Jurisdiction of Magistrate passing the order. If the submission of the learned Counsel for the applicant is accepted, it shall cause great hardship to the other side in whose favour order has been passed. If the order cannot be executed for any reason then only the Magistrate may direct the party to get the order implemented at the place where the person liable to pay the amount under the order, is residing or the property is situated. Applicant cannot object at this stage.

8. The provision has no force and is, accordingly, rejected.

9. A certified copy of this order shall be given to the learned Counsel for the applicant on payment of usual charges within three days.