
(2018) 08 MP CK 0082
In the Madhya Pradesh High Court
Case No : Writ Appeal No.719 Of2018

Gopalkrishna

APPELLANT

Vs

Babulal & Others

RESPONDENT

Date of Decision : 09-08-2018

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Code Of Criminal Procedure, 1973 — Section 125
Code Of Criminal Procedure, 1973 — Section 115

Citation : (2018) 08 MP CK 0082

Hon'ble Judges : P.K. Jaiswal, J;S.K. Awasthi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Heard on the question of admission.

2. This intra-court appeal has been filed by the appellant, who is son of the respondent Nos.1 and 2, challenging the order dated 25.05.2016 passed by

the Sub-Divisional Officer, Susner, District Agar Malwa under the provisions of the M. P. Maintenance and Welfare of Parents and Senior Citizen

Rules, 2009 (in short the Rules of 2009), by which the competent authority granted Rs.3,000/- per month to both the respondents, who are

father and mother of the appellant.

3. Learned Writ Court vide impugned order dated 09.05.2018 passed in W. P. No.21411/2017 has held that no patent illegality has been committed by

the Sub-Divisional Officer and the order passed by him has no jurisdictional error and dismissed the writ petition with costs.

4. Brief facts of the case are that the present appellant is son of the respondent Nos.1 and 2. In a proceeding under the Rules of 2009, the Sub-

Divisional Officer granted maintenance @ Rs.3,000/-. The Collector in an appeal preferred by the appellant/son has set aside the order dated

22.03.2017. The old parents challenged the same by filing W. P. No.2471/2017. Learned Writ Court vide order dated 22.11.2017 has set aside the

order passed by the Collector as there was no right available to the present appellant and it was also observed that the Appellate Tribunal can hear the

appeal, if it is filed by the parents. Thereafter, the appellant challenged the order of the Sub-Divisional Officer on the ground that the same is bad by

law. His second ground was that an application under Section 125 of Cr.P.C. preferred by the old parents has been dismissed vide order dated

31.01.2013. The Sub-Divisional Officer could not have granted maintenance to the old parents. Learned Writ Court after considering the grounds

raised by the appellant, dismissed the writ petition by passing the following order :-

After hearing learned counsel for the parties at length, this court is of the considered opinion that the two provisions for granting maintenance are

having different situations merely because some application in the year 2013 preferred under the Code of Criminal Procedure has been rejected

against the parents it will not come in way of the parents for filing an application under the Madhya Pradesh Maintenance and Welfare of Parents and

Senior Citizen Rules, 2009.

Learned Sub- Divisional Officer has taken into account the income of the son and the miserable condition of the parents who are not earning and after

taking into account the facts produced before him, has arrived at the conclusion that the parents are entitled for a sum of Rs. 3000/- per month. The

order passed by the Sub-Divisional Officer does not suffer from any perversity nor from jurisdictional error. Though the amount of Rs. 3000/- per

child is a meager amount and it is a very difficult for two person to survive but as no appeal has been filed by the parents, this court is of the

considered opinion that the amount awarded by the Sub-Divisional Officer does not warrant any interference. It is really unfortunate these days

parents are dragged to courts by children for their survival. The social obligation is not being fulfilled by the children and, therefore it has forced the

Legislature to enact the Welfare Laws for Sr. citizen and rightly maintenance has been awarded by the Sub-Divisional Officer keeping in view the

pathetic condition of the parents. The order passed by the Sub-Divisional Officer does not warrant any interference and the scope of article 227 is quite limited.

The apex court in the case of Shalini_Shyam Shetty Vs. Rajendra Shankar Patil reported in 2010 (8) SCC 329 - 2 in paragraph 49 held as under:

49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh (supra) and the principles in Waryam Singh (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to

exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent

perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles

of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than

the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of

the Constitution by the Constitution Bench of this Court in the case of L. Chandra Kumar vs. Union of India & others, reported in (1997) 3 SCC 261

and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code

(Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered

that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is

to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of

justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that

the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the

functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be

exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest â?" 3 whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.

In light of the aforesaid judgment as no patent illegality has been committed by the Sub-Divisional Officer and the order passed by him does not suffer from any jurisdictional error, this court does not find any reason to interfere with the order dated 25-05-2016.

The admission is declined with a costs of Rs. 25,000/-. The costs be paid to the respondents No.1 and 2 within a period of thirty days and if it is not paid within thirty days, the learned Collector Agar- Malwa shall recover it as arrears of land revenue, for paying it to the parents of the petitioner.

5. On due consideration of the aforesaid so also the relevant provisions of the Rules of 2009, we are of the view that the learned Writ Court has rightly dismissed the appeal and affirmed the order passed by the Sub-Divisional Officer. There is no flaw in the order. No case to interfere with the impugned order, as prayed is made out. The writ appeal filed by the appellant has no merit and is accordingly, dismissed.