

(1992) 12 OHC CK 0002
In the Orissa High Court
Case No : Criminal No. 241 of 1992

Mahapratap Rudra Das

APPELLANT

Vs

Pravabati Das

RESPONDENT

Date of Decision : 16-12-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 125(3)

Citation : (1993) 2 DMC 54

Hon'ble Judges : R.K. Patra, J;A. Pasayat, J

Bench : Division Bench

Advocate : U. Ch. Mohapatra, S.S. Das and D.S. Das, for the Appellant; M.M. Das, M.N. Misra, M.N. Das and B.D. Pradhan, for the Respondent

Final Decision : Dismissed

Judgement

A. Pasayat, J.

Objection to the maintainability of an execution proceeding before the Family Court, Cuttack having been negated by the learned Judge, Family Court, Cuttack, this appeal has been filed.

1. Skeletal facts necessary for disposal of the appeal are as follows :

Pravabati Das (hereinafter referred to as the "respondent") moved the learned Sub-Divisional Judicial Magistrate, Sadar, Cuttack (in short, the "SDJM") for a direction to grant maintenance u/s 125 of the Code of Criminal Procedure, 1973 (in short, the "Cr.P.C."). She claimed to be the legally married wife of Mahapratap Rudra Das (hereinafter referred to as the "appellant"). According to her, appellant had sufficient means but he neglected and refused to maintain her. She claimed to have married the appellant as back as in the year 1954 according to Hindu rites. Claim of respondent was resisted by the appellant, mainly on the ground that there was no marriage as claimed. Learned SDJM allowed prayer for maintenance and directed the appellant to pay maintenance @ Rs. 150 per month from the date of application i.e 24-4-1989. A motion was made before

learned Judge, Family Court, Cuttack alleging appellant's failure to comply with the order granting maintenance without sufficient cause. Appellant was asked to show cause as to why prayer of the respondent for action u/s 125(3), Cr.P.C. was not to be allowed.

2. Appellant filed objection to the show cause notice, primarily challenging maintainability of the application. It was alleged that since the order u/s 125, Cr.P.C. was passed by learned SDJM, learned Judge, Family Court had no jurisdiction to execute it. Reference was made to Sub-section (3) of Section 18 of the Family Courts Act, 1984 (in short the "Act") Learned Judge. Family Court held that Sub-section (3) had no application because it related to a decree of order passed in a civil proceeding. It was observed that in respect of the order for execution proceeding had been initiated, Sub-section (2) had application. The order passed by learned Judge, Family Court, Cuttack is the subject-matter of challenge in this appeal.

3. Mr. U.C. Mahapatra, learned Counsel for the appellant has urged this Section 18 of the Act had no application to the facts of the present case because the order in respect of which execution proceeding was initiated was not passed by the Family Court. Mr. M.M. Das appearing for the respondent however, submitted that in view of the provisions of Sections 7 and 8 of the Act, the contention merits no consideration.

4. The jurisdiction of the Family Court is delineated in Section 7 which reads as follows :

"7. Jurisdiction (1) Subject to the other provisions of this Act, a Family Court shall--

(a) have and exercise all the jurisdiction exercisable by any District Court or any subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purpose of exercising such jurisdiction under such law to be a district Court or, as the case may be, such subordinate Civil Court for the area to which the jurisdiction of the Family Court extends. ,

Explanation--The suits and proceedings referred to in this Sub-section are suits and proceedings of the following nature, namely :--

(a) a suit or proceeding between the parties to a marriage for a decree of a nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or distribution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person ;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

- (d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;
- (e) a suit or proceeding for a declaration as to the legitimacy of any person;
- (f) a suit or proceeding for maintenance;
- (g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise :

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parties) of the Code of Criminal Procedure, 1973 (2 of 1974) ; and

(b) such other jurisdiction as may be conferred on it by any other enactment.

Section 8 deals with exclusion of jurisdiction and pending proceeding. The Section reads as follows :

"3. Exclusion of jurisdiction and pending proceeding--Where a Family Court has been established for any area :

(a) no District Court or any subordinate Civil Court referred to in Sub-section (1) of Section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that Sub-section;

(b) no Magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) ;

(c) every suit or proceeding of the nature referred to in the Explanation to Sub-section (1) of Section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)--

(i) which is pending immediately before the establishment of such Family Court before any District Court or subordinate Court referred to in that Sub-section or, as the case may be, before any Magistrate under the said Code; and

(ii) which would have been required to be instituted or taken before or by such Family Court if, before the date on which such suit or proceeding was instituted or taken this Act has come into force and such Family Court had been established, shall stand transferred to such Family Court on which it is established.

5. Sub-section (2) of Section 7 provides that Family Court shall exercise in addition to the jurisdiction conferred by Sub-section (1) jurisdiction exercisable by a Magistrate First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Cr.P.C. In the instant case, the application for

execution had its genesis on the order u/s 125, Cr.P.C. which was pending before the establishment of the Family Court, before any Magistrate was to stand transferred to the Family Court on the date on which it is established. According to Mr. Mohapatra, on the date the Act came into force, no application was pending and therefore, the petition was not maintainable. The plea is misconceived, because after establishment of the Family Court, the jurisdiction exercisable by Magistrate of First Class under Chapter IX is to be exercised by the Family Court. It is not in dispute that had the Family Court not been established, power u/s 125(3), Cr.P.C. would have been exercised by the Magistrate. After establishment of the Family Court, obviously the power has to be exercised by the Family Court. Therefore, the Family Court had jurisdiction to deal with the matter. The objection filed by the appellant relating to the maintainability of execution proceeding was misconceived. However, the observations of the learned Judge that Section 18(2) of the Act had application is not correct. The said provision relates to an order passed by the Family Court under Chapter IX of Cr. P. C. In the instant case, the order was not that of the Family Court, but of learned SDJM. The objection was rightly rejected.

The appeal has no merit and is dismissed.

R.K. Patra, J.

I agree.