
(1993) 08 GAU CK 0034
In the Gauhati High Court
Case No : Criminal R. No. 374 of 1993

Md. Pasnur Ali

APPELLANT

Vs

Rufia Begum

RESPONDENT

Date of Decision : 13-08-1993

Acts Referred:

Family Courts Act, 1984 — Section 7(2), 8

Citation : (1993) CriLJ 3463 : (1993) 2 DMC 329

Hon'ble Judges : U.L. Bhatt, C.J

Bench : Single Bench

Advocate : B. Ullah, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

U.L. Bhat, J.—Petitioner is the husband of the respondent. Respondent filed an application u/s 125 of the Code of Criminal Procedure before the Sub-divisional Judicial Magistrate, Rangia claiming maintenance. Parties filed a joint petition before the learned Magistrate indicating that they have decided to live as spouses. Petitioner undertook that he shall not torture or divorce the wife and further undertook that if he violates the condition he would pay Rs. 125/- per month as maintenance allowance to her. The compromise was recorded by the learned Magistrate, who dropped the case. After the establishment of the Family Court the respondent filed an application before the Court alleging that the husband has violated the terms of compromise and claiming arrears of maintenance at the agreed rate. The Family Court issued notice to the husband. The efforts of the Counsellor attached to the Court to bring about reconciliation failed. Admittedly the petitioner had contracted a second marriage after the earlier compromise. The Family Court passed an order directing husband to pay arrears of maintenance at the agreed rate till 15-5-93 and directing issue of distress warrant. This order is now challenged.

2. Learned Counsel for the petitioner urged three contentions before me, namely, (1) that the compromise order is incapable of being executed, (2) that the Family

Court has no jurisdiction to implement or execute an order passed by a Magistrate, and (3) that the Family Court can execute only an order passed by it.

3. The facts recited above indicate that the wife had a genuine ground to move the Magistrate u/s 125 of the Code. This is reflected from the undertaking given by the husband in the compromise petition not to treat the wife with cruelty and in case he violates any condition, to pay maintenance at the rate of Rs. 125/- per month to the wife. There is no dispute that subsequent to the compromise, petitioner took a second wife. The question of the first wife thereafter living with him could not reasonably arise. Under these circumstances, the Family Court apparently came to the conclusion that there was an effective order passed by the Magistrate u/s 125 of the Code. This is capable of being implemented. To take any other view would be to frustrate the very purpose of Section 125 of the Code and to compel the wife to move a fresh petition u/s 125 of the Code. I do not think such was the legislative intention. It is possible to take the view that the compromise order is in effect and substance an order directing the husband to pay maintenance to the wife at the rate of Rs. 125/- per month in case he violates any of the conditions agreed to. The fact that he took a second wife during the subsistence of first marriage is itself an act of cruelty. I, therefore, find no legal inhibition against the implementation of the order.

4. The remaining contentions can be considered together. In substance, the contention is that if the compromise order passed by the Magistrate is to be regarded as an order passed u/s 125 of the Code, the Magistrate alone can execute the order and a Family Court cannot execute the order. In support of this contention, learned Counsel for the petitioner places reliance on Sections 8 and 18 of the Family Court Act, 1984. Section 7 of the Act deals with the jurisdiction of the Family Courts. Section 8 deals with the exclusion of jurisdiction and pending proceedings. This provision inhibits any Court from exercising any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to Section 7(1). It also inhibit all Magistrates from exercising any jurisdiction under Chapter IX of the Criminal Procedure Code. It further directs that all such suits and proceedings pending before the establishment of Family Court shall stand transferred to the Family on the date on which it is established. It is, therefore, contended that the Family Court can deal only with pending proceedings and cannot deal with cases disposed by Magistrates before the establishment of Family Court and the Family Court cannot execute orders already passed by Magistrate. Section 18 deals with execution of decrees and orders. It declares, inter alia, that an order passed by the Family Court under Chapter IX of the Code shall be executed in the manner prescribed by that Code. It is, therefore, contended that Family Court cannot execute earlier order passed by any Magistrate.

5. This argument overlooks the provisions in Section 7 of the Act. Sub-section (1) vests in the Family Court all jurisdiction exercisable by District Court or any subordinate Civil Court in respect of suits and proceedings of the nature referred

to in the Explanation. Sub-section (2) vests jurisdiction in the Family Court to exercise jurisdiction exercisable by a Magistrate of the First Class under Chapter IX of the Code any other jurisdiction as may be conferred on it by any other enactment. Sub-section (2) thus makes it clear that any jurisdiction exercisable by a competent Magistrate under Chapter IX of the Code can be exercised by the Family Court. There can be no doubt that but for the establishment of the Family Court, any Magistrate, who passes an order u/s 125 of the Code, has jurisdiction to execute the order passed under the provisions of Chapter IX of the Code. Such jurisdiction of the Magistrate has become vested in the Family Court by virtue of Section 7(2)(a) of the Act. It could also be noticed that by virtue of Section 8(b) of the Act, there is a divestiture of jurisdiction of Magistrate in relation to powers exercisable under Chapter IX of the Code. This would mean that after the establishment of a Family Court, no Magistrate within the jurisdiction of the Family Court can exercise any jurisdiction under Chapter IX of the Code. In these circumstances, I reject the contention that the Family Court cannot execute the order passed by the Magistrate.

The revision petition is dismissed.