
(2011) 05 RAJ CK 0145

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 669 of 2010

Mohammed Rafique

APPELLANT

Vs

Smt. Barkat

RESPONDENT

Date of Decision : 24-05-2011

Acts Referred:

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

Citation : AIR 2011 Raj 124 : (2011) 4 CivCC 205 : (2011) 4 RCR(Civil) 700 :
(2011) 4 RCR(Civil) 700 : (2011) 4 RCR(Criminal) 554 : (2011) 4 RCR(Criminal)
555 : (2011) 4 RLW 3078

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—Aggrieved by the order dated 13.07.2010 passed by the Family Court, Jodhpur, whereby the learned Judge has directed the petitioner to pay a maintenance of Rs. 2,000/- per month, the petitioner has sought the refuge of this Court.

2. The learned counsel for the petitioner has raised a single contention before this Court, namely u/s 7 of the Family Courts Act, 1984, the Family Court does not have the jurisdiction to entertain an application filed u/s 125, Cr. P.C. In order to buttress this contention, the learned counsel has relied upon the case of Shahidul Haq Chisti v. Smt. Rana Nahid & Anr. (AIR 2010 (NOC) 1101 (Raj.)).

3. On the other hand, the learned counsel for the respondent has relied upon the case of Shabana Bano Vs. Imran Khan, in order to buttress his contention that the Family Court does have the jurisdiction to entertain an application filed u/s 125, Cr.P.C.

4. Heard the learned counsel for the parties and perused the case law cited at the Bar.

5. Section 7 of the Act is as under :--

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 purposes 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 suit and proceedings referred to in this sub-section are suit and proceedings of the following nature, namely:

(a) a suit or proceeding between the parties to a marriage for 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 dissolution of marriage;

(b) a suit or proceeding for the 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 parents) of this Code of Criminal Procedure, 1973 (2 of 1974); and

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

6. A bare perusal of the said provision clearly reveals that the Family Court would have the jurisdiction in respect of "suits and proceedings of the nature referred to in explanation". According to sub-clause (f) of the Explanation "a suit or proceeding for maintenance" can be heard by the Family Court. The words "suits or proceedings for maintenance" have not been limited by specifying as to the maintenance under a specific law. Thus, the words "suit or proceedings for

maintenance" would have to be given the widest interpretation to include maintenance under any law in force for the time being. Therefore, the contention raised by the learned counsel for the petitioner that subclause (f) of the Explanation debars the hearing of an application u/s 125, Cr.P.C., is clearly untenable.

7. Moreover, in the case of Shabana Bano, (AIR 20,10 SC 305) (supra), this issue was dealt with by the Apex Court after analysing the existence of sub-clause (f) of the Explanation, mentioned above. The Hon"ble Supreme Court was of the opinion that the Family Courts would certainly have the jurisdiction to hear an application filed u/s 125, Cr. P.C. Therefore, the judgment in the case of Shahidul Haq Chisti (supra) was impliedly overruled by the case of Shabana Bano (supra). Therefore, the case of Shahidul Haq Chisti (AIR 2010 (NOC) 1101 (Raj) (supra) does not come to the rescue of the petitioner. Keeping in mind the ratio, laid down in the case of Shabana Bano (supra), the contention raised by the learned counsel for the petitioner is unacceptable.

8. Hence, this, petition is devoid of any merit; it is, hereby, dismissed.