
(1988) 07 KL CK 0040
In the High Court Of Kerala
Case No : Criminal R.P. No. 45 of 1988

P.A. Hamsuddin

APPELLANT

Vs

Sabhiya and Another

RESPONDENT

Date of Decision : 06-07-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 125(1), 125(2), 125(3), 126
Muslim Women (Protection of Rights on Divorce) Act, 1986 — Section 3, 7

Citation : (1988) 07 KL CK 0040

Hon'ble Judges : U.L. Bhat, J; M.M. Pareed Pillay, J

Bench : Division Bench

Advocate : K.A. Shamsuddin, for the Appellant; M.M. Abdul Aziz and M.M. Sayed Mohammed, for the Respondent

Final Decision : Dismissed

Judgement

U.L. Bhat, J.—Respondents herein, mother and son, obtained an order against the revision Petitioner (divorced husband of the first Respondent and father of the second Respondent) u/s 125 of the Code of Criminal Procedure for payment of maintenance. The order was passed on 21st May 1985. The Muslim Women (Protection of Rights on Divorce) Act, 1986 (for short "the 1986 Act") came, into force on 19th May 1986. Thereafter the revision Petitioner filed an application before the learned magistrate u/s 127 of the Code contending that the provisions of the Act constitute change of law in regard to right and - liability in respect of maintenance and change of law amounts to change of circumstances as contemplated u/s 127 of the Code and, therefore, the earlier order passed for payment of maintenance to the divorced wife has to be cancelled. The learned Magistrate held that the order cannot be cancelled u/s 127 and dismissed the application. That order is challenged in this revision. The learned Single Judge before whom the matter came up directed that the case should be heard by a Bench of two Judges.

2. There is no dispute that when the earlier petition u/s 125 was filed and the

order directing revision Petitioner to pay maintenance to the Respondents was passed, the first Respondent had been divorced by the husband. Since Section 125 of the Code permitted an order for payment of maintenance being passed in favour of a divorced wife, the order of maintenance was passed. Learned Counsel for the revision Petitioner would contend that in view of Section 3 of the 1986 Act, the liability of the divorced husband to the divorced wife is to pay maintenance only for the period of "iddat" and not for any subsequent period and this provision constitutes change of law in regard to maintenance. Such change of law, according to learned Counsel, would attract Section 127(1) of the Code.

3. Section 125 of the Code deals with order for maintenance of wives, divorced wives, children and parents. A divorced wife who is unable to maintain herself and is neglected is entitled to secure an order of maintenance against her erst while husband. Section 126 deals with the procedure for proceedings u/s 125. Section 127 deals with alteration of allowance. Sub-section (1) reads thus:

On proof of a change in the circumstances of any person, receiving u/s 125 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife, child, father or mother, as the case may be, the Magistrate may make such, alteration in the allowance as he thinks fit:

Provided that if he increases the allowance, the monthly rate of five hundred rupees on the whole shall not be exceeded.

Sub-section (2) deals with cancellation and variation of order in consequence of any decision of a competent Civil Court. Sub-section (3) deals with cancellation of order in certain specific contingencies which are not attracted in the present case.

4. Sub-section (1) contemplates alteration in the allowance on proof of change in the circumstances of any person receiving a monthly allowance or the change of circumstances of any person ordered to pay maintenance. The provision can be invoked only if in regard to either the person liable to pay maintenance or the person entitled to receive maintenance .there is change in circumstances. The provision does not admit of any interpretation to the effect that a mere change of law, personal or otherwise, would be "change of circumstances of any person".

5. Learned Counsel has placed reliance on a decision of Supreme Court in Jagir Singh Vs. Ranbir Singh and Another, . In that case an order for maintenance was passed u/s 488 of the 1898 Code of Criminal Procedure directing the husband/father to pay maintenance to his wife/child at a time when the child was a minor. The order was confirmed by the High Court. After the coming into force of the Code of Criminal Procedure 1974, the husband/father filed an application u/s 127 for cancellation of order of maintenance passed in favour of the son on the ground that the son had attained majority and did not suffer from any abnormality or injury which rendered him unable to maintain himself. The basis of the application was that u/s 125 of the new Code, only a minor son can claim

maintenance and not a son who has attained majority unless he is by reason of abnormality unable to maintain himself. The Supreme Court held that the case was governed by Section 484(2)(b). That provision stated, inter alia, that all orders passed under the old Code shall be deemed to have been passed under the corresponding provisions of the new Code. The Court took the view that Section 125 of the new Code is a provision corresponding to Section 488 of the old Code and the maintenance order passed earlier must be deemed to have been passed u/s 125 of the new Code and that being so Section 127 could be invoked. On the question whether there was change of circumstances in respect of the person entitled to maintenance, the Court noticed that the son had admittedly attained majority and that coupled with the change of law would constitute "change of circumstances".

6. We are unable to agree that the principle laid down in the above decision can have any bearing on the facts of the present case. The mere attainment of majority, in Jagir Singh Vs. Ranbir Singh and Another, on the part of the son without the change of law would have been of no consequence. Equally, change of law without the son attaining majority would, also be of no consequence. Change in factual circumstances was the attainment of majority by the son. Change in law was that a son who has attained majority and was not abnormal and thereby unable to maintain himself would not be entitled to maintenance. In the present case there is no change of circumstances of the person in whose favour the order of maintenance was passed, that is, the divorced wife or of the person against whom an order of maintenance was passed, that is, the divorced husband. Their status and position remain unchanged. The only change is the enactment of 1986 Act providing for alternative principles of Jaw applicable to divorced Muslim wives. We do not understand the decision of the Supreme Court in Jagir Singh Vs. Ranbir Singh and Another, as laying down that a mere change of law would amount to "change of circumstances" so as to attract the operation of Section 127(1) of the Code.

7. We notice that the 1986 Act contains specific provision in Section 7 stating that application filed under Sections 125 or 127 of the Code and pending on the coming into force of the 1986 Act has to be disposed of under the provisions of the Act notwithstanding anything contained in the Code. It is significant that the 1986 Act does not contain a provision enabling reopening of orders passed under the provisions of the Code which have become final. This is one more indication to show that mere change of law cannot lead to alteration or cancellation of orders passed under the Code which have become final.

8. Sections 125 and 127 of the Code are integral part of a scheme of ensuring the survival of and progress in condition of the destitutes. Section 127 is intended to correct maintenance orders passed u/s 125 in the light of specific grounds contemplated in Section 127. Section 127 cannot be invoked to tamper or interfere with maintenance orders on grounds outside the frame work of Section 127 or to bring orders, which became final prior to the 1986 Act, into

conformity with provisions of the 1986 Act. The corrective must rest only on Section 127 and not on the provisions of the 1986 Act.

In the result, we find no ground to interfere and dismiss the revision petition.