Pritam Kaur Vs Surjit Singh

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 31, 1983

Acts Referred: Constitution of India, 1950 â€" Article 14
Hindu Marriage Act, 1955 â€" Section 9

Citation: AIR 1984 P&H 113 : (1984) 1 ILR (P&H) 263 : (1984) 1 RCR(Rent) 399

Hon'ble Judges: S.S. Sandhawalia, C.J; S.C. Mital, J; Prem Chand Jain, J

Bench: Full Bench

Judgement

S.S. Sandhawalia, C.J.
The linchpin of our justice system--the doctrine of precedent and its binding nature--is the significantly spinal issue

in this reference by the learned single Judge recording a frontal dissent from the ratio of the Full bench in Smt. Kailash Wati v. Avodhia Parkash.

1977 79 PLR 216 and seeking its reconsideration by a still larger a Bench. This jugular issue inevitably calls for adjudication at the very threshold.

2 The issue aforesaid stems from a broken-down marriage. The respondent-husband had preferred a petition u/s 9 of the Hindu Marriage Act

1955 (hereinafter referred to as the Act) for the restitution of conjuga1 rights against the appellant-wife. It was averred that the parties were

married way back in July, 1967 and a daughter born out of this wedlock had died within a few days of her birth. The couple resided together for a

year or less and that too sporadically and thereafter on the l7th of August, 1972. the appellant-wife withdrew from the society of the respondent-

husband without any reasonable cause and despite repeated requests and entreaties of the respondent-husband arid the members of his family she

declined to return and live with him. Ultimately, a panchayat along with the family members of the respondent-husband had approached and

requested for the return of the appellant-wife to the matrimonial home but she flatly refused to return and stay with him at Bhatinda. The

respondent-husband was then compelled to resort to the service of a registered legal notice to the wife in February 1974. reiterating his request to

come and reside with him. Pursuant thereto the appellant-wife made a show of returning to the husbands house at Bhatinda for a few days and then

again went away to her Parents house an the l6th of May. 1974. Persistent. attempts thereafter to persuade the appellant-wife to return to the

matrimonial home having failed the petition for restitution of conjugal rights was hence presented on the 27th of July. 1974.

3. In contesting the petition. the appellant-wife admitted the marriage but pleaded that she was serving as a teacher in another State in Rajasthan,

where she was posted at different places after her marriage. It was alleged that she had continued in service of the Rajasthan Government with the

consent of the respondent-husband. She pleaded that she had been continuing visiting the respondent-husband during the leave periods since she

was continuing in service in Rajasthan at her various places of postings. In the replication filed by the respondent-husband, it was stoutly denied

that the appellant-wife was continuing in the service of Rajasthan Government with his consent and instead it was averred that she was doing so

against his categoric wishes to the contrary. The other allegations made in the written statement were also controverted.

4. On the aforesaid pleadings, the trial court learned a solitary issue in the following terms:--

Whether the respondent has withdrawn from the society of the petitioner without any reasonable excuse?

After an elaborate consideration of the evidence led by both the parties, it arrived at the following categoric finding of fact :--

In the case in hand the petitioner is employed at Bhatinda while the respondent has be n serving in the State of Rajasthan. In these circumstances

they cannot visit each other even at the weekend or an alternative week-end or when they have only few holidays. They can reside together only

when the respondent gets vacations once a year. Such an arrangement in my opinion is directed against the basic concept of marriage which

inquires both the spouses to live together and discharge the matrimonial obligations.

Holding rightly that on the aforesaid premises the ratio of the Full Bench in Smt. Kailash Watis case 1977 PLR 216 (supra) was directly attracted

the petition was allowed and a decree for the restitution of conjugal rights was granted in favour of the husband.

5. Aggrieved by the judgment of the trial court, the appellant-wife preferred the present appeal. This originally was placed before a learned single

Judge and before him, learned counsel for the appellant attempted strenuously to assail the ratio of the Full Bench in Smt. Kailash Wati''s case

(supra). The learned single Judge, in his order reference has categorically differed from the reasoning rationale and the conclusion of the Full bench.

In particular he observed that an altogether fresh argument sought to be rested on the equality clause of Art. 14 of the Constitution was not raised

before the Full Bench and consequently not considered by it. On this premise he declined to follow the same and opined that the Full Bench

decision in Smt. Kailash Wati''s case (supra) needs reconsideration by a still larger Bench and the reference was made accordingly.

6. Before us it was indeed the common and admitted position of the parties that on the facts of the present case the ratio of the Full Bench in Smt

Kailash Watis case 1977 PLR 216 (supra) directly and squarely covers the legal issues involved. Now once it is so held as it inevitable must be,

then a fortiori its ratio was binding on the learned single Judge. What is the precise import of this binding nature, seems now to need no exhaustive

dissertation More than two centuries ago Blackstone in his celebrated Commentaries elaborated the rule of the binding nature of the precedent in

the following terms :--

It is an established rule to abide by former precedents when the same points come again into litigation as well to keep the scale of justice even and

steady and not likely to waver with every Judges new opinion, as also because the law in that case being solemnly declared and determined, what

before was uncertain is now become a permanent rule, which it is not in the breast of any subsequent Judge to alter or vary from according to his

private sentiments.

The aforesaid rule has been unhesitatingly followed in our jurisprudence so much so that the superior Courts of England have held themselves

bound by their own earlier decisions irrespective of the number of Judges rendering the same. In Young v. Bristol Aeroplane Co. Ltd. (1944) 2 All

293 it has now been settled beyond doubt that the Court of Appeal would be bound to follow previous decisions of its own irrespective of the fact

whether the judgment was of a Division o! the said Court or of the Full Court. Conforming to this very discipline, the House of Lords was also so

inflexibly bound by its earlier decisions that the same could be corrected only by an Act of Parliament and no otherwise. However being the fina1

Court a limited change from this rigid rule was made in the following terms by the Practice Statement (Judicial precedent) 1966 1 WLR 1234:--

Lord Gardiner L C.:--Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its

application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs as well as

a basis for orderly development of legal rule.

Their Lordship nevertheless recognize that too rigid adherence to precedent may lead to injustice in a particular Case and also unduly restrict the

proper development of the law. They propose. therefore, to modify their present practice and while treating former decisions of this House as

normally binding. to depart from a previous decision when it appears right to do so.

In this connection they will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of properly and fiscal

arrangements have been entered into and also the especial need for certainty as to the criminal law.

This announcement is not intended to affect the use of precedent elsewhere than in this House.

7Ã¯Â¿Â½ Now the true approach to a binding precedent is illustrated by the celebrated words of Buekley. L. J. in Produce Brokers Co. Ltd. v.

Olympis Oil & Cake Co. Ltd. (1918) 1 A. C. 314, as under:--

I am unable to adduce any reason in show that the decision which I am about to pronounce is right. On the contrary, if I were free to follow my

own opinion, my own powers of reasoning such as they are, I should say that it is wrong. gut I am bound by authority--which, of course it is my

duty to follow-- and following authority. I feel bound to pronounce the judgment which I am about to deliver.

Similarly Lord Cozens-Hardy. M. R. in Velazquez Ltd. v. Inland Revenue Commrs. (1914) 3 KB. 458 had occasion to observe as follows :--

But there is one rule by which of course, we are bound to abide that when there has been a decision of this Court upon a question of principle it is

not right for this court, whatever its own views may be to depart from that decision. There would otherwise be no finality in the law. If it is

contended that the decision is wrong then the proper course is to go to the ultimate tribunal the House of Lords who have power to settle the law

and hold that the decision which is binding upon as is not good law.

8. As in England so in India, the legal position is identical and indeed Article 141 gives a constitutional status to the theory of precedents in respect

of the law declared by the Supreme Court. In Tribhavandas Purshottamdas Thakkar v. Ratilal Patel AIR 1988 SC 372, whilst settling all veiled

doubts raised by Raju J., with regard to the theory of precedents, it was held (at p. 378) :--

Precedents which enunciate rules of law form the foundation of administration of justice under our system. It has been held time and again that a

single Judge of High Court is ordinarily bound to accept as correct judgments of Courts of Co-ordinate jurisdiction and of division Benches of his

Court and of this Court. The reason of the rule which makes a precedent binding lies in the desire to secure uniformity and certainty in the law"".

Even earlier in A. Raghavamma v. A. Chmchamma AIR 1984 SC 138, it was held as axiomatic that a Division Bench was bound by the decision

of another Division Bench.

9. It would thus follow that once a precedent is held to be a binding one, then no deviation therefrom is permissible within judicial polity except in

the well accepted categories of cases enumerated hereafter in para 12 of this judgment.

10Ã¯Â¿Â½ It is equally necessary to highlight that the binding nature of precedents generally and of Full Benches in particular is the kingdom of our

judicial system. It is the bond that binds together what otherwise might well become a thicket of individualistic opinions resulting in a virtual judicial

anarchy. This is a self-imposed discipline which rightly is the envy of other Schools of Law. Because of the legal Position here being axiomatic and

well-settled it is unnecessary to elaborate the issue on principle. In. Jai Kaur and Others Vs. Sher Singh and Others, , their Lordships gravely

frowned on any deviation from the law once settled by the Full Bench and observed, that thereafter any previous decision on the same point

contrary to its ratio would have to be ignored in the following terms (Para 10) :--

.....It is true that they did not say in so many words that these cases wrongly decided: but when a Full Bench decides a question in a particular

way every previous decision which had answered the same question in a different way cannot be held to have been wrongly decided.....

xx xx xx xx xx xx

And again:

.....If as we pointed out there considerations of judicial decorum and legal propriety require that Division Benches should not themselves

pronounce decisions of other Division Benches to be wrong. such consideration should stand even more firmly in the way of Division Benches

disagreeing with a previous decision of the Full Bench of the same Court.

11Ã¯Â¿Â½ Now apart from Full benches and the precedents of the superior Court, it would appear that even judgments of the Benches of the same

High Court in a limited way are binding in the sense that a judgment cannot be rendered contrary to the earlier decision of a co-equal Bench. At

the highest an equivalent bench can seek reconsideration of the same by a larger bench. It is unnecessary to multiply the precedents on the point

and reference may instructively be made to the following observations in Mahadeolal Kanodia Vs. The Administrator-general of West Bengal, :--

.....Judicial decorum no less than legal propriety forms the basis of judicial procedure. If one thing is more necessary in law that any other thing,

it is the quality of certainty. That quality would totally disappear if judges of co-ordinate jurisdiction in a High Court start overruling one another''s

decisions. If one Division Bench of High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the

earlier decision is wrong, itself gives effect to that view the result would be utter confusion.....

To the same tenor are the observations in Jaisri Sahu Vs. Rajdewan Dubey and Others, as 9 and 10 of the report, Shri Bhagwan and Another Vs.

Ram Chand and Another, : Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others, : Chetu Ram v. Asa Nand

(1962) 64 PLR 235 : and C. Varadarajulu Naidu Vs. Baby Ammal and Another, .

12. From the above, it would follow as a settled principle that the law specifically laid down by the Full bench is binding upon the High Court

within which it is rendered and any and every veild doubt with regard thereto does not justify the reconsideration thereof by a larger Bench and

thus put the law in a ferment afresh. The ratio of the Full Benches are and should be rested on surer foundation and are not to be blown away by

every side wind. It is only within narrowest field that a judgment of a larger Bench can be questioned for reconsideration. One of the obvious

reasons is where it is unequivocally manifest that its ratio has been impliedly overruled or whittled down by a subsequent judgment of the superior

Court or a larger Bench of the same Court. Secondly, where it can be held with certainty that a co-equal bench has laid the law directly where it

can be conclusively said that the judgment of the larger Bench was rendered per incuriam by altogether failing to take notice of a clear-cut statutory

provision or an earlier binding precedent. It is normally within these constricted parameters that a smaller Bench may suggest a reconsideration of

the earlier view and not otherwise. However it is best in these matters to be neither dogmatic nor exhaustive yet the aforesaid categories are

admittedly the well-accepted ones in which an otherwise binding precedent may be suggested for reconsideration.

13. Again an equally well-settled form for references to larger benches calls for a passing comment. By hallowed precedent it is necessary to

suggest the number of Judges who may have to be requested to consider or reconsider a significant point of law in a Full Bench. That is a matter to

be viewed and decided individually on the peculiarities of each case and therefore, to pin-point the number or the order of the Judges who may be

called upon to consider the matter must. therefore be left entirely open.

14Ã¯Â¿Â½ However, it is equally apt to elaborate what cannot be a valid ground for questioning or reconsidering the law settled by a larger Bench. The

very use of the word ''binding'' would indicate that it would hold the field despite the fact that the Bench obliged to follow the same may not itself

be in agreement at all with the view. It is a necessary discipline of the law that the judgments of the superior Courts and of larger Benches have to

be followed unhesitatingly whatever doubts one may individually entertain about their correctness. The rationale for this is plain because to seek a

universal intellectual inanimate is an ideal too Utopian to achieve. Consequently the logic and the rationale upon which the ratio of a larger bench is

rested, are not matters open for reconsideration. Negatively put, therefore the challenge to the rationale and reasoning of larger Bench is not a valid

ground for unsettling it and seeking a re-opening and re-examination of the same this putting the question in a flux afresh.

15. It remains to advert to the solitary ground which was originally pressed by the learned counsel for the appellant in support of this reference. It

was sought to be argued that argument resting on Art. 14 of the Constitution with regard to equality even in the context of the personal laws like

the Hindu Law, could be raised which had in fact not been raised before and considered by the Full Bench. On this premise it was suggested that

the ratio of Full Bench in Smt. Kailsah Wati"s case 1977 PLR 216 would either be by-passed or called in for reconsideration.

16.The argument aforesaid is plainly untenable on principle. If the ratios of larger Benches and the judgments of superior Courts were to be merely

rested upon the quicksand"s of the ingenuity of the counsel to raise some fresh or novel argument (which had not been earlier raised or considered)

in order to dislodge them, then the hallowed rule of the finality of binding precedent would become merely a teasing mirage. It seems unnecessary

to elaborate this aspect because it is clearly concluded by binding precedent. An identical issue arose in Smt. Somavanti and Others Vs. The State

of Punjab and Others, , wherein the Constitution Bench was invited to ignore the earlier precedents of the Supreme Court up-holding the

constitutionality of the Land Acquisition Act on the ground that the attack resting on Art. 19(1)(f) was not raised before the earlier Benches. It was

counsels forceful stand that the earlier judgments for that reason would not be binding. Categorically rejecting such an argument their Lordships

observed as under (at p. 160):--

.....All the decisions are binding upon us. It is contended that none of the decisions has considered the argument advanced before us that a law

may be protected from an attack under Art. 31(2) if the restriction placed by it on the right of a person to hold property is unreasonable. In other

words, for the law before us to be regarded as valid it must also satisfy the requirements of Art. 19(5) and that only thereafter can be property of a

person be taken away. It is sufficient to say that though this Court may not have pronounced on this aspect of the matter, we are bound by the

actual decisions which categorically negative an attack based on right guaranteed by Art. 19(1)(f). The binding effect of a decision does not

depend upon whether a particular argument was considered therein or not provided that the point with reference to which an argument was

subsequently advanced was actually decided. That point has been specifically decided in the three decisions referred to above.

Yet again in T. Govindaraja Mudaliar Vs. The State of Tamil Nadu and Others, the Bench was invited to ignore the earlier decisions about the

constitutionality of the Chapter IV-A of the Motor Vehicles Act, on the ground that a fresh argument under Art. 19(1)(f) sought to be raised was

not earlier considered and adjudicated upon Repelling the contention and reiterating the aforequoted passage from Smt. Somavanti and Others Vs.

The State of Punjab and Others, , it was observed as under:--

It is common ground in the present cases that the validity Chapter IV-A of the Act has been upheld on all previous occasions and merely because

of the aspect now presented based on the guarantee contained in Art. 19(1)(f) was not expressly considered or decision given thereon will not

take away the binding effect of those decisions on us.

Following the above identical views have been expressed in Ramanlal Keshavlal Son v. State of Gujarat AIR 1977 Guj 76 (para 50 of the report)

and Chikkamuddu and Others Vs. State of Karnataka and Others, . The solitary stand in support of the reference, therefore merits rejection.

17. It deserves pointed notice and indeed redounds to the credit of the learned counsel for the appellant. Mr. J. R. Mittal that when faced with the

aforementioned precedents and unable to the contrary, he in the end conceded his inability to support the reference.

18. To finally conclude, it has to be inevitably held that the ratio of the Full Bench in Smt. Kailash Wati"s case 1977 PLR 216 (supra) was binding

upon the learned single Judge and he was obliged to follow the same. No question for its reconsideration could therefore arise before the single

Bench. In this situation it follows logically that the present reference does not arise and the case has consequently to be sent back to a single Bench

foe a decision on merit in accordance with the law laid down in Smt. Kailash Watis case (supra).

Prem Chand Jain, J.

19. I agree.

S.C. Mittal, J.

20. I agree.

21. Reference answered accordingly.