

(2012) 02 AHC CK 0173

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 929 of 2008

Yogendra Nath Dubey

APPELLANT

Vs

Additional District and Sessions
Judge/F.T.C.II, Sultanpur and
Another

RESPONDENT

Date of Decision: Feb. 20, 2012

Acts Referred:

- Constitution of India, 1950 - Article 14, 226, 227
- Criminal Procedure Code, 1973 (CrPC) - Section 125(2), 397

Hon'ble Judges: Vishnu Chandra Gupta, J

Final Decision: Disposed Of

Judgement

Vishnu Chandra Gupta, J.

Challenge in this petition under Article 226/227 of Constitution of India is the order dated 14.1.2008 passed in Criminal Revision No. 354 of 2007, Savitri Devi v. Yogendra Nath Dubey, by Additional Sessions Judge/Fast Track CourtII, Court No. 11, Sultanpur wherein the order of learned Magistrate dated 28.6.2007 passed in proceedings under Section 125, Criminal Procedure Code (for short "Cr. P.C.") was modified to the extent that maintenance would be payable from the date of presentation of the application, i.e., from 22.5.2001 instead of from the date of order.

2. It is not in dispute that an application under Section 125, Cr. P.C. was presented on 22.5.2001 by respondent No. 2 Smt. Savitri Devi for grant of maintenance against her husband petitioner Yogendra Nath Dubey. This application remained pending for more than 6 years. Judgment was delivered in this case awarding maintenance of Rs. 800 per month from the date of order, i.e., 28.6.2007.

3. The order of learned Magistrate was challenged in Criminal Revision No. 354 of 2007 which was disposed of by the impugned judgment, whereby the order was

modified as stated above. Aggrieved with this order this petition has been filed by husband/petitioner.

4. The revisional order was assailed by the petitioner's counsel on the sole ground that revisional court while exercising jurisdiction under Section 397, Cr. P.C. could not change the date of grant of maintenance decided by the Magistrate after exercising its discretion under Section 125 (2), Cr. P.C. Discretionary order cannot be challenged unless it is shown to be against the statutory provisions or suffering from Jurisdictional error or perverse. It was further submitted that in view of Section 125 (2), Cr. P.C. the courts normally award the maintenance from the date of order. If the court intending to award the maintenance from the date of presentation of application, is bound to assign reasons, as is evident from the language of the Section.

5. On the contrary, learned counsel appearing on behalf of private respondent vehemently submitted that the scheme of Chapter IX of Cr. P.C. if taken into account, the position would be otherwise. Normally, the award of maintenance should be made effective from the date of application, but if court awards maintenance from the date of order, reasons must be assigned.

6. The learned counsel for the respondent/O.P pointed out amendments made under Section 125, Cr. P.C. with intent to provide deserted women, children and parents prompt relief.

7. Two major amendments were introduced under Section 125, Cr. P.C. prior to 24.9.2001, the maximum amount which may be awarded under Section 125, Cr. P.C. was of Rs. 500 but that limit was lifted by Act No. 50 of 2001. Another amendment was incorporated making provision for interim maintenance. A time schedule of 60 days from the date of service of notice was also provided for disposal of application for interim maintenance. These amendments were made effective from 24.9.2001 vide Act No. 50 of 2001. The relevant amended provision of Section 125, Cr. P.C. are extracted below ;

725. Order for maintenance of wives, children and parents.(1) If any person having sufficient means neglects or refuses to maintain

(a) his wife, unable to maintain herself,

or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself,

or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is by reason of any physical or mental abnormality or injury unable to maintain itself,

or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, as such monthly rate ****[***]**, as such Magistrate thinks fit, and to pay the same to such person as the

Magistrate may from time to time direct :

[Provided that the Magistrate may order the father of a minor female child referred to in Clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

******[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this subsection, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct :

Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceedings under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation. For the purposes of this Chapter,

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875), is deemed not to have attained his majority ;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

******[(2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.]

******. The words "not exceeding five hundred rupees in the whole" omitted by Act 50 of 2001, Section 2 (w.e.f. 24.9.2001).

******. Inserted by Act 50 of 2001, Section 2 (w.e.f. 24.9.2001).

"Substituted by Act 50 of 2001, Section 2 for subsection (2) (w.e.f. 24.9.2001).

8. Before commencement of Central Act 50 of 2001, in State of Uttar Pradesh subsection (6) of Section 125, Cr. P.C. was added by U. P. Act No. 36 of 2000 w.e.f.

13.8.2001. Sub section (6) of Section 125, Cr. P.C. added by U. P. Act 36 of 2000 is also extended below :

Uttar Pradesh. In its application to the State of Uttar Pradesh, in Section 125,

(b) after subsection (5), insert the following subsection, namely :

"(6) Where in a proceeding under this section it appears to the Magistrate that the person claiming maintenance is in need of immediate relief for his support and the necessary expenses of the proceeding, the Magistrate may, on his application, order the person against whom the maintenance is claimed, to pay to the person claiming the exceeding five thousand rupees and such expenses of the proceeding as the Magistrate consider reasonable and such order shall be enforceable as an order of maintenance." Uttar Pradesh Act 36 of 2000, Section 2 w.e.f. 13.8.2001.

9. This Court in *Basant Lal v. State of U. P. and others*, 1996 Cr LJ 69 (All) : 1995 ACR 81, held, that claim of the maintenance of wife normally be enforced from the date of application. Denial of such claim must be supported with reason to be recorded in the order itself. The court also doubted the validity of Section 125 (2), Cr. P.C. in the light of Article 14 of Constitution of India. This law relates to unamended Sub Section 2 of Section 125, Cr. P.C. when there was no provision for interim maintenance.

10. In another case of this Court in *Harish Chandra Yadau v. Usha*, 2008 ALJ 684 (All), this Court held that when no maintenance is paid to the wife either before filing of the application under Section 125, Cr. P.C. or during pendency of such application, the maintenance should normally be allowed from the date of application and in such case amount awarded from the date of application would be justified.

11. In *Shiv Kumar Singh v. State of U. P.*, 2007 (2) ALJ 560 : 2007 (1) ACR 1073, this Court observed that if wife has been awarded interim maintenance, the order should normally be enforced of final maintenance under Section 125, Cr. P.C. from the date of order and not from the date of application.

12. In *Nakshatra Singh v. Hajinder Kaur and others*, 1995 Cr LJ 2726 (P&H) Punjab and Haryana High Court held that the trial court has discretion to grant maintenance either from the date of application or from the date of order. Exercising this discretion either way, the court requires to record reasons to show that discretion was exercised judiciously.

13. From bare reading of Section 125 (2), Cr. P.C. it is clear that Magistrate while deciding the application finally under Section 125, Cr. P.C. may award the maintenance from the date of order or from the date of application. The scheme of this subsection (2) of Section 125, Cr. P.C. gives discretion to the court dealing with application under Section 125, Cr. P.C. This provision does not specifically speak for recording reasons while awarding maintenance from either of the two dates. Subsection (2) provides terminology "from the date of order, or, if so ordered, from

the date of application".

14. Subsection (6) of Section 354, Cr. P.C. provides that judgments/orders in relation to certain sections of Cr. P.C. including order under Section 125, Cr. P.C. shall contain point or points for determination, the decision thereon and reasons for decision.

15. The provision of subsection (6) of Section 354 is extracted below ;

(6) Every order under Section 117 or subsection (2) of Section 138 and every final order made under Section 125, Section 145 or Section 147 shall contain the point or points for determination, the decision thereon and the reasons for the decision.

16. Apart from aforesaid provision, it is wellsettled principle of law that every order passed by quasijudicial or judicial authority, must be speaking and reasoned as held in follwing cases :

K. R. Deb v. Collector of Central Excise, Shillong, AIR 1971 SC 1447.

State of Assam and another v. J.N. Roy Biswas, AIR 1975 SC 2277.

State of Punjab v. Kashmir Singh, 1997 SCC (L&S) 88.

Union of India and others v. P. Thyagarajan, AIR 1999 SC 449.

Union of India v. K. D. Pandey and another, (2002) 10 SCC 471.

Assistant Commissioner, Commercial, Tax Department, Works, Contract and Leasing, Quota v. Shukla and Brothers, JT 2010 (4) SC 35.

C.C.T. v. Shukla and Brothers, 2010 (4) SCC 785.

17. In the case of Shukla and Brothers (supra), their lordships held that the reason is the very life of law. When the reason of a law once ceases, the law itself generally ceases, such is the significance of reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoids uncertainty, to quote :

"Reasons are the soul of orders. Nonrecording of reasons could lead to dual infirmities ; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principle are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements."

The concept of reasoned judgment has become an indispensable part of the basic rule of law and, in fact, is a mandatory requirement of the procedural law."

18. In one other case, in Assistant Commissioner, Commercial. Tax Department, Works, Contract and Leasing, Quota, v. Shukla and Brothers, JT 2010 (4) SC 35, their lordships of Hon"ble Supreme Court held that it shall be obligatory on the part of the judicial or quasijudicial authority to pass a reasoned order while exercising statutory jurisdiction. Relevant portion from the judgment of Assistant

Commissioner (supra) is reproduced as under :

"The principle of natural justice has twin ingredients ; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the Court should meet with this requirement with high degree of satisfaction. The order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality. The distinction between passing of an order by an administrative or quasijudicial authority has practically extinguished and both are required to pass reasoned orders."

19. Thus, it is wellsettled proposition of law that not only judicial or quasijudicial order but even the administrative order affecting the civil rights of the citizens, should be reasoned one to cope with the requirement of Article 14 of the Constitution. Unreasoned order creates instability and distrust in people's mind towards the administration or the authority who has passed such order. In democratic polity, there is no scope to pass an order affecting civil rights of the citizens which may be unreasoned. It is constitutional obligation and right of the citizens to know the reasons in the decision making process affecting their right or cause.

20. The argument advanced by learned counsels for the parties should be tested on the touchstone of the intention of the legislation behind Chapter IX of Criminal Procedure Code.

21. In Chapter IX of Cr. P.C. procedure has been provided for disposal of applications for grant of maintenance expeditiously. It was experienced by law makes that these applications remain pending for years together in the Courts of law either due to pressure of work or on account of the conduct of the parties. The law makers thought it proper in the aforesaid circumstances that provision of interim maintenance should also be introduced with time frame for disposal of such applications. This procedural law is to provide the financial assistance quickly for livelihood to wife, children and parents who have been deserted by there own are bound to maintain them. Therefore, the same may be categorized as beneficial legislation eroding social evil for those who are neglected and have no financial means to live with dignity even with least facility necessary for life. The Apex Court from time to time and considering the resources available with Government/State expending the scope of Article 21 by including the right of dignified life for citizen of the country.

22. True that the dispute of grant of maintenance is in between the two individuals but while interpreting the provision of a statute the Apex Court in several decisions followed the doctrine of "Legislative intent". This principle of legislative intent has been discussed by Supreme Court in National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700, while interpreting the beneficial provisions of Motor Vehicles Act, 1988 the relevant paragraphs 14 and 19 of judgment is extracted below :

14. A plea has been taken about the desirability of purposive construction. "Golden Rule" of interpretation of statutes is that statutes are to be interpreted according to grammatical and ordinary sense of the word in grammatical or liberal meaning unmindful of consequence of such interpretation. It was the predominant method of reading statutes. More often than not, such grammatical and literal interpretation leads to unjust results which the Legislature never intended. The golden rule of giving undue importance to grammatical and literal meaning of late gave place to "rule of legislative intent". The world over, the principle of interpretation according to the legislative intent is accepted to be more logical. When the law to be applied in a given case prescribes interpretation of statute, the Court has to ascertain the facts and then interpret the law to apply to such facts. Interpretation cannot be in a vacuum or in relation to hypothetical facts. It is the function of the Legislature to say what shall be the law and it is only the Court to say what the law is.

19. A statute is an edict of the Legislature and in construing a statute, it is necessary to seek the intention of its maker. A statute has to be construed according to the intent of those who make it and the duty of the court is to act upon the true intention of the Legislature. If a statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the Legislature. This task very often raises difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of Legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative Legislature to foresee all situations exhaustively and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the Courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the Legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In

other words the legislative intention, i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. (See *District Mining Officer and others v. Tata Iron and Steel Co.* and another, JT 2001 (6) SC 183.)

23. Considering the aforesaid authorities cited above and the legislative intent behind introducing the provision of interim maintenance by Act of 2001, the provision of subsection (2) of Section 125, Cr. P.C. must be interpreted in such a way that they should give effect the provisions in consonance with legislative intent behind the scheme of Chapter IX of the Criminal Procedure Code.

24. One thing is also kept in mind that provision contained in Chapter IX of Cr. P.C. are equally applicable to all the citizens of India irrespective of their race, religion or caste. It is a part of common code applicable to all the citizens of this country. This special enactment in procedural law was introduced with intent to lift riders ingrafted in the personal law of citizens by which they are governed as held in *Saha Bano's* (Mohd. Ahamad Khan v. Saha Bano Begam). (1985) 2 SCC 556, confirmed by Constitutional Bench of Supreme Court in *Davi Ratif and another v. Union of India*, AIR 2001 SC 3958 and further relied upon in *Shabana Bano v. Imran Khan*, 2010 (1) CCSC 15 : 2010 (1) ACR 187 (SC).

25. Considering all these aspect of the matter, this Court summaries the position which is as follows :

25. (a) The court while awarding maintenance finally under Section 125, Cr. P.C. if wife, children or parents, as the case may be, are not responsible for causing delay in disposal of proceedings, normally the maintenance should be awarded from the date of application.

25. (b) However, if wife, children or parents, as the case may be, are responsible for the delay in disposal of proceedings, or they have been awarded interim maintenance in view of second proviso of Section 125, Cr. P.C, the court shall award the final amount of maintenance under Section 125, Cr. P.C. from the date of order.

25. (c) The word "if so ordered" should not mean in the aforesaid context to the court while exercising its discretion to assign specific reason in case of award of final maintenance under Section 125, Cr. P.C. from the date of application. The term "if so ordered" means that if the Magistrate orders the maintenance to be paid from the date of application, he can do so.

25. (d) Section 354 (6), Cr. P.C. provides that every order under Section 117 or subsection (2) of Section 138, Cr. P.C. and every final order made under Section 125, Cr. P.C., Section 145 or Section 147 shall contain the points for determination, the decision thereon and reasons for the decision. The provision clearly mandate that the courts passing* final order under Section 125, Cr. P.C. shall also decide the

point, whether the amount of maintenance should be awarded from the date of order or from the date of application? The discretion in this regard is left with the court awarding maintenance. Such court must have assigned reasons for exercising his discretion in either way.

26. Now the question that arises for consideration whether revisional court can substitute its own finding regarding date of payment of maintenance contrary to finding recorded by court allowing the application under Section 125, Cr. P.C.

27. It is wellsettled that when a lower court did not record any finding on any issue, the revisional court after considering the facts and circumstances and material available on record is sufficient, may record its own finding and to decide the dispute as a whole. In such situation, the remand of case would be wholly unwarranted. However, the revisional court while exercise its power if finds the finding of lower court is perverse or suffering from jurisdictional error, may set aside the same and remand the matter for reconsideration in the right prospective in accordance with provision of law. In such case the revisional court cannot substitute its own finding in place of finding recorded by the trial court.

28. Admittedly, in the case in hand the revisional court set aside the finding of the lower court granting maintenance from the date of order and substitute its own finding contrary to finding recorded by learned Magistrate. Thus, revisional court exceeded in its jurisdiction.

29. The perusal of impugned order reveals that no reason has been assigned for grant of maintenance to the respondent No. 2 from the date of order. The same should be given in view of subsection (6) of Section 354, Cr. P.C. Otherwise too, as discussed above, every authority or court should assign reasons while passing orders on any point in issue, so parties may know the same. Therefore, it would be expedient in the interest of justice that matter should be remitted back to the Magistrate to decide the controversy, whether the maintenance should be awarded from the date of application or from the date of order? The learned Magistrate shall decide the above controversy keeping in view the legal position enumerated herein above in this judgment.

30. Consequently, The petition is allowed. The impugned order passed in Criminal Revision No. 354 of 2007 dated 14.1.2008 is set aside. The order passed by trial court in Case No. 18 of 2002 dated 28.6.2007 is also set aside to the extent which relates to award of final maintenance from the date of order. The learned Magistrate is directed to register the case on its original number and thereafter, decide the question of payment of award of maintenance either from the date of presentation of application or from the date of order as he thinks fit. The learned Magistrate in either of the case should assign reason for doing so on the basis of material already on record of this case and without being influenced with the finding recorded by the revisional court. The above controversy shall be decided by the learned Magistrate

after hearing both the sides within one month from the date of production of certified copy of this order. The Office shall also communicate the order of this Court to the court of learned Magistrate.

31. Parties of this case shall appear before the court below on 4.1. 2013.

32. It is made clear that the petitioner would not be relieved from making payment to the respondent No. 2 under the order of the learned Magistrate at the rate of f 800 per month till the disposal of the controversy by the learned Magistrate.