

Biswanath Banerjee Vs Madhabi Banerjee and Another

Court: Calcutta High Court

Date of Decision: Sept. 22, 1982

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 12(3), 125, 156(3), 2(d)
Constitution of India, 1950 â€” Article 227

Hon'ble Judges: Amitabha Dutt, J

Bench: Single Bench

Advocate: Sardar Amjad Ali, for the Appellant; Himangshu Dey, for the Respondent

Final Decision: Dismissed

Judgement

Amitabha Dutta, J.

This Revisional application is directed against an order dated 21-1-81 passed by the learned Judicial Magistrate,

Serampore in Misc. Case No. 83 of 1979 allowing maintenance allowance at Rs. 200/- per month to the Respondent No. 1 and affirmed by the

order dated 25-5-81 passed by the learned Sessions Judge, Hooghly in Criminal Motion No. 30 of 1981 subject to reduction in the quantum

from Rs. 200/- to Rs. 150/- per month as maintenance allowance for the Respondent No. 1 and her minor child. The husband has filed the present

application u/s 227 of the Constitution of India and the only ground of challenge is that the learned Judicial Magistrate who passed the order for

maintenance had no jurisdiction to deal with the application u/s 125 of the Code as it had been filed in the Court of the Sub-Divisional Judicial

Magistrate, Serampore who transferred the said application to the learned Judicial Magistrate and such order of transfer is not warranted by law

and therefore, the learned Judicial Magistrate had no jurisdiction to pass the impugned order of maintenance.

2. The learned Advocate for the petitioner referred to the provisions of Section 12, section 192 and section 461(g) of the Code in support of his

contention that the Sub-Divisional Judicial Magistrate has no power to transfer the application u/s 125 of the Code filed before him to any other

Judicial Magistrate and in case of such transfer, the transferee Magistrate will not be competent to deal with the application and dispose of it

according to law. On the other hand, it is submitted by the learned Advocate appearing for the Respondent that the Sub-Divisional Judicial

Magistrate can send an application u/s 125 of the Code filed before him to any other Judicial Magistrate of the First Class by way of administrative

action as no question of taking cognisance is involved and that the Supreme Court has held In the case of Gopal Das -vs- State of Assam reported

in AIR 1961 SC 986 that even in a case of complaint an Additional District Magistrate before taking cognizance of the offence can send the

complaint to any Magistrate for disposal by way of administrative action.

3. After hearing the learned Advocates for the parties, I find that the objection raised on behalf of the petitioner regarding the jurisdiction of the

learned Magistrate in passing the order for maintenance is not well founded and cannot prevail. An application for maintenance u/s 125 of the

Code is not a complaint as defined in Section 2(d) of the Code of Criminal Procedure as there is no allegation of commission of any offence

therein. So there can be no question of taking cognisance of the allegation made in such an application, u/s 190 of the Code and Section 192 of the

Code does not apply to making over such an application by the Sub-Divisional Judicial Magistrate to any Judicial Magistrate of the first Class

within the subdivision. In the case of Gopal Das-vs- State of Assam (AIR 1961 SC 986) the Supreme Court has held the transfer of a case

contemplated u/s 192 of the Code is only of cases in which cognisance of an offence has been taken. In that case, the Additional District

Magistrate had not taken cognisance when the complaint was presented to him, and he sent the complaint to another Magistrate for disposal. The

Supreme Court held that such making over of the complaint would not be a transfer of a case u/s 192 of the Code and that the Additional District

Magistrate could send the complaint by way of administrative action and the other Magistrate could order investigation u/s 156(3) of the Code.

Section 12(3) of the Code envisages administrative control of the Sub-Divisional Judicial Magistrate over Judicial Magistrates in the sub-division.

The Sub-Divisional Judicial Magistrate is therefore competent in my view to make an administrative transfer of an application u/s 125 of the Code

to another Judicial Magistrate of the first class. Clause (a) of Section 461 provides that if a Magistrate not empowered by law in this behalf makes

an order for maintenance his proceeding shall be void. But Section 125 of the Code shows that any Judicial Magistrate of the first class has the

power to make an order for maintenance under that section. So it cannot be said that the order for maintenance made by a Judicial Magistrate of

the first class on an application sent by the learned Sub-Divisional Judicial Magistrate to him for disposal will be hit by clause (g) of Section 461 of

the Code. For the foregoing reasons, I find that the present application under Article 227 of the Constitution of India challenging the jurisdiction of

the learned Judicial Magistrate, Serampore to make the order for maintenance cannot succeed. It is therefore dismissed and the Rule is discharged.

Interim order, if any, is vacated.