

(1985) 04 CAL CK 0040

Calcutta High Court

Case No: Criminal Rev. No. 2474 of 1981

Sudhangshu Sekhar Ganguli

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision: April 12, 1985

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 126, 126(1), 179, 2

Citation: 89 CWN 920

Hon'ble Judges: Sankar Bhattacharjee, J

Bench: Single Bench

Advocate: A. Kabir and Shukla Kabir, for the Appellant; Debaprosad Bhattacharyya for Opposite Party Nos. 2 and 3 and Parul Banerjee for State, for the Respondent

Judgement

Sankar Bhattacharjee, J.

The short but important question that falls for determination in this revisional application is whether a father or a mother, unable to maintain himself or herself, can initiate proceedings for maintenance u/s 125, Code of Criminal Procedure, 1973 (Code for short) against the son at the place where he or she resides. The question arises thus. On October 7, 1980, opposite party no. 2 Hazari Lal Ganguli for self and on behalf of his wife Sm. Sushama Bala Ganguly, the opposite party no. 3, filed an application in the court of the learned Sub-Divisional Judicial Magistrate, Ranaghat, u/s 125 of the Code claiming maintenance from their son, the petitioner herein, at the rate of Rs. 250/- per month. It was alleged that an earlier proceeding for maintenance initiated by them against the petitioner ended in a compromise as a result of misrepresentation made by the petitioner to maintain them. Since, however, the petitioner failed and neglected to do so as per terms of the compromise they were compelled to initiate the second proceeding.

2. After appearance of the petitioner and filing of written objection by him, the case was transferred by the learned Sub-Divisional Judicial Magistrate to a learned

judicial Magistrate of Ranaghat for disposal.

3. On 23.5.81 the petitioner, by an application, prayed for dropping of the proceeding on the ground that the earlier proceeding having ended in a compromise between the parties, a second proceeding on identical allegations could not lie. The learned Magistrate, however, ordered the application to be kept in the record with the observation that the objection raised therein would be heard during the trial.

4. On 6.7.81 the petitioner filed another application before the learned Magistrate challenging his territorial jurisdiction to try the case. The point raised by the petitioner was that since he is a resident of Duttapukur in the district of 24-Parganas, the proceeding for maintenance could not be taken against him at Ranaghat which is within the district of Nadia. This time also, the learned Magistrate pass a similar order directing the application to be kept in the record, observing that the objection would be heard at the time of trial and fixed 12.9.81 for evidence. It may be mentioned that the date for evidence was fixed by the learned Magistrate notwithstanding the specific prayer of the petitioner to hear and decide the question of jurisdiction as a preliminary issue.

5. Being aggrieved by the above order, the petitioner moved this court in revision and obtained the present Rule.

6. Mr. Kabir appearing in support of the Rule refers to Section 126 of the Code which specifies the districts in which proceedings u/s 125 of the Code may be taken Sub-section (1) of Section 126 which is relevant for our purpose is extracted below :

Procedure.

126. (1) Proceedings u/s 125 may be taken against any person in any district-

(a) where he is, or

(b) where he or his wife resides, or

(c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.

7. The words "any person" appearing in Sub-section (1) quoted above obviously means the person referred to in Sub-section (1) of Section 125 of the Code against whom proceedings can be taken under the said Section. On a plain reading of Sections 125 and 126 of the Code it, therefore, becomes manifestly clear that proceedings for maintenance u/s 125 can only be taken in any of the places specified in clauses (a), (b) and (c) of Section 126(1) of the Code but in no other place.

8. It may be mentioned that Section 126 of the Code is based on Section 488 of the old Code of 1898 with liberal changes for maintenance in favour of divorced wives, parents and major children (other than a married daughter) who are unable to

maintain themselves. The new Section 126 has also enlarged the venue of proceedings for maintenance so as to include the place where the wife may be residing on the date of the application. As observed by the law Commission, the venue was enlarged on account of the fact that often deserted wives are compelled to live with their relatives far away from the place where the husband and the wife last resided together.

9. Mr. Bhattacharyya, opposing the Rule on behalf of opposite party nos. 2 and 3, vehemently argues that when under the new code of 1973 the wife has been given the right to initiate a proceeding for maintenance against her husband in the district in which she resides, there is no conceivable reason why such right should be denied to the old and destitute parents who may be in a worse condition than the wife.

10. The argument, though attractive, cannot be accepted. The legislature makes laws and the courts administer the laws so made. It is a well-settled principle of the interpretation of statutes that where there is no ambiguity in the law itself there is no scope for its interpretation by the courts. Where the language of a section is plain and clear, the courts cannot question the wisdom of the legislature in enacting it. If the legislature had really intended to extend such benefit to the parents by including the place of their residence in the venue, it could easily do so by inserting the words "or where the father or the mother resides" in Section 126(1) of the Code, which has not been done. By no stretch of imagination, therefore, can it be said that the father or the mother can initiate proceedings u/s 125 of the Code against the son in the district where he or she (father or mother) resides.

11. Mr. Bhattacharyya next relies upon Section 179 of the Code in support of his contention that proceedings u/s 125 of the Code could validly be taken also in the Ranaghat court within the jurisdiction of which opposite party nos. 2 and 3 reside.

12. Section 179 appears in chapter XIII under the heading "Jurisdiction of the Criminal Courts in inquiries and trials" and lays down that when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued.

13. The argument of Mr. Bhattacharyya is that an offence was committed by the petitioner by failing to maintain his parents as a result of which they had to endure sufferings which, according to him is, the consequence of the offence, at their place of residence at Gangapur, within the police station of Ranaghat. According to Mr. Bhattacharyya, therefore, proceedings u/s 125 could validly be taken in the court of the Judicial Magistrate, Ranaghat.

14. The above argument is wholly misconceived and does not stand a moment's scrutiny. Failure to maintain the wife, child, father or mother does not constitute an "offence" as defined in clause (n) of Section 2 of the Code nor is an application u/s

125 of the Code a "complaint" as defined in Section 2(d) thereof. When an application for maintenance is made, there is no allegation of the commission of any offence. Hence, the procedure for inquiry contemplated by Section 202 before issuance of processes cannot apply to an application u/s 125 of the Code. In that view of the matter, chapter XIII of the Code relating to the jurisdiction of the criminal courts inquires and trials can have no manner of application to a proceeding u/s 125 of the Code. It is thus clear that the place of residence of the father or mother cannot be the venue for initiation of a proceeding u/s 125 of the Code against the son.

15. Before parting with the matter, it should be placed on record that the manner in which the learned Magistrate shelved a decision on the vital issue of lack of jurisdiction going to the very root of the case, is far from commendable. Had he cared to have even a cursory look at section 126 of the Code, he could not have felt any hesitation to reject the application outright and thereby spare the parties of unnecessary litigation which means unnecessary expenses, anxiety and hardship. For the above reasons, the proceedings in Misc. Case No. 91 of 1980 pending in the court of the learned Judicial Magistrate, Ranaghat, cannot be allowed to continue. It must be quashed and is accordingly quashed.

In the result, the Rule is made absolute.