Purshotamdass and others
v.
The Controller of Estate Duty Delhi

Pandit, J.

This authority is clearly distinguishable on facts and, as such, has no application to the instant case.

As regards the contention that the Board should have deducted Rs. 10,000 together with interest thereon, which was the share of Smt. Kushal Devi, from the value of the property left by Kanhya Lal, there is no merit in the same. In the first place, this question has not been referred to this Court. Secondly, it was not even mentioned in the application made by the petitioners under section 64(1) of the Act. Thirdly, as already held by me above, Smt. Kushal Devi had given up her right to receive Rs. 10,000 at the time of partition and decided to remain joint with her husband and chose to be maintained by him.

In view of what I have said above, I would answer the question referred to us in the affirmative. In the circumstances of this case, however, I will leave the parties to bear their own costs in this Court.

Dua, J.

INDER DEV DUA, J.—I agree.

B. R. T.

REVISIONAL CRIMINAL

Before Shamsher Bahadur, J.

BHAGWAN SINGH,—*Petitioner.*

versus

MST. GURNAM KAUR AND ANOTHER,—*Respondents.*

Criminal Revision No. 116 of 1964.

Code of Criminal Procedure (V of 1898)—S. 488—Petition for maintenance dismissed for default—Whether can be restored by the Court.

1965

November, 3rd

Held, that there is no provision in the Code of Criminal Procedure which empowers the Magistrate to restore for hearing an application which has been dismissed in default by him. In the absence of any such provision in the Code itself, the power of restoration cannot be spelled out from the general provisions.

Case reported under Section 438 of the Criminal Procedure Code, by Shri Surinder Singh, Ist Additional Sessions Judge, Ludhiana, with his letter No. 178/R12 dated 1st September, 1964, for revision of the second order of Shri Joginder Pal Singh Puri,

Magistrate Ist Class, Ludhiana dated 18th November, 1963, restoring the case dismissed in default.

G. S. GREWAL, ADVOCATE, for the Petitioner.

BHUPINDER SINGH BINDRA, ADVOCATE, *for* the Respondents.

ORDER OF THE HIGH COURT

Shamsher Bahadur, J.

SHAMSHER BAHADUR, J.—The question which arises for determination in this petition for revision is whether a criminal Court passing an order dismissing a petition for maintenance under section 488 of the Code of Criminal Procedure in default can subsequently set aside its own order and restore the application?

An application was filed by Gurnam Kaur under section 488 of the Code of Criminal Procedure for the grant of maintenance allowance against her husband Bhagwan Singh. The application was being proceeded with when on 18th of November, 1963, Gurnam Kaur petitioner being absent, it was dismissed after it had been called several times. On her subsequent appearance the same day the trial Court passed an order issuing notice to Bhagwan Singh to produce his evidence on 5th of December, 1963. Bhagwan Singh thereafter filed a petition for revision before the learned Sessions Judge who has forwarded this petition to this Court with a recommendation that the order passed by the Magistrate being without jurisdiction should be quashed. The recommendation is based on a decision of Gurdev Singh J., *Babu Ram* v. *Ramji Lal and others* (1) in which it was said that if once a Magistrate passes an order dismissing for default an application under section 145 of the Code of Criminal Procedure, the proceedings cannot be restored. The reasoning of the learned Judge was that a criminal court, other than a High Court, does not possess any inherent powers nor is there any provision in the Criminal Procedure Code to review its judgment or order, not even in cases where the order is patently wrong or contrary to law.

Concededly, there is no provision in the Code of Criminal Procedure which could justifiably empower the Magistrate to restore for hearing on application which is dismissed in default by a Magistrate. Mr. Grewal, the learned counsel for the petitioner, in support, of the reference,

(1) I.L.R. (1964) 1 Punj. 697=1964 P.L.R. 196.

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Shamsher Bahadur, J.

has brought to my attention a Division Bench judgment of Harrington and Mookerjee JJ. in *Hakimi Jan Bibi* v. *Mouze Ali* (2), Harrington J., speaking for the Court, held that the law does not empower a Magistrate to rehear an application for maintenance under section 488, Criminal Procedure Code, dismissed for non-appearance.

The learned counsel for the respondent has contended that the Court in its inherent powers can always review its judgment and the Magistrate's action in restoring the petition when the petitioner reappeared on the day when it was dismissed in default must be upheld. In the absence of any provision in the Code itself, the power of restoration cannot be spelled out from the general provisions. Being in respectful agreement with the authority of Gurdev Singh J. of this Court and of the Division Bench of the Calcutta High Court, I would accept the recommendation and quash the order of the Magistrate.

R.S.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur, J.

IQBAL SINGH GREWAL AND ANOTHER,—*Petitioners.*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No. 216 of 1965.

1965

November, 3rd

Gift Tax Act (XVIII of 1958)—Ss. 19 and 29—Gift tax due from the deceased—Whether to be recovered out of the estate left by him or from the donees.

Held, that section 19 of the Gift Tax Act, 1958, deals with a situation where a donor being dead, liability for the payment of the gift tax is fixed on his estate or his executors. An executor, administrator or a legal representative of the deceased donor is made liable only to the extent of the estate which has devolved on him. It means naturally that when the estate is capable of meeting the gift-tax, the donee is not to be made liable for the payment of the gift-tax. Section 29 reiterates that the primary responsibility for payment of the gift-tax is on the donor but when it cannot be so recovered, the donees will be liable for its payment. Where the donees are more than one, they shall be jointly and severally liable and the extent of their liability will never exceed the value of the gift. It is not difficult to visualise a situation where the donor's estate has been exhausted by gifts and in such circumstances it has been provided that the Exchequer will not be the loser and the donees will be liable.

(2) (1905) 2 Cr. L.J. 213.