Supreme Court of India
Khatoon Nisa vs State Of U.P. And Ors. on 14 August, 2002
Equivalent citations: 2003 (1) AWC 128 SC, JT 2002 (7) SC 631, 2002 (6) SCALE 165
Bench: G Pattanaik, M Shah, D Raju, S Variava, D Dharmadhikari
ORDER

1. These two appeals are directed against the judgment of a learned single judge of the Allahabad High Court, Lucknow bench, by grant of certificate from the said judgment. The two appeals are filed by the ceiling surplus tenure holder and his wife and one of the dispute was whether there has been a divorce between them as early as in the year 1969.

2. After coming into force of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as 'the Act') before the prescribed authority, the tenure holder took a stand that the land recorded in the name of his wife who has already been divorced since 1969 cannot be clubbed. The wife also took a similar stand. Section 3(7) of the Act defines the expression 'family' in relation to a tenure holder to mean himself or herself and his wife or her husband as the case may be, (other than a judicially separated wife or husband), minor sons and minor daughters (other than married daughters). Since the prescribed authority was required to determine the ceiling surplus in the hand of the tenure holder, one of the questions for consideration was whether in fact there has been a divorce between the tenure holder and his wife as claimed by them or it was merely a subterfuge to get over the rigours of the provisions of the Ceiling Act. On the basis of materials produced before it, the prescribed authority came to the conclusion that in fact there had been no divorce and the parties adopted divorce attempts for escaping the ceiling law. The said prescribed authority also came to the conclusion that there was no other document excepting the family register kept with the pradhan, where the wife and the husband have been entered separately. In fact the prescribed authority gave due weight to the family register which had been kept with the rural development officer who was the competent authority to issue the family register. Having come to the aforesaid conclusion, the prescribed authority concluded that the land standing in the name of Khatoon Nisa, wife of Rahmatullah, the tenure holder, has to be clubbed with the holding of the tenure holder, inasmuch as they come within the definition of the 'family' under Section 3 (7) of the Act.

3. Being aggrieved by the aforesaid order of the prescribed authority, both Sh. Rahmatullah and his wife, Smt. Khatoon Nisa, preferred appeals under Section 13 of the Act and the appellate authority affirmed the conclusion arrived at by the prescribed authority and came to the conclusion that there has been no error committed by the prescribed authority in treating the appellant being members of the same family for the purpose of the provisions of the Act. The two appeals thus having been dismissed, the matter was carried to the High Court under Article 226 of the Constitution. The learned judge of the High Court, without being guided by the parameters for exercise of power under Article 226 against an order of an inferior tribunal, went on to examine the issue as to whether there can be a divorce under the Muslim law by uttering three times the word 'talaq' in one sitting and having elaborately delved into the same came to the conclusion that such 'talaq' is unconstitutional and cannot be sustained. Having thus came to the aforesaid conclusion, the court affirmed the conclusion of the prescribed authority under the Ceiling Act in the matter of determination of the surplus land in the hands of the tenure holder. The court having granted

certificate against the judgment the appeals came to be filed.

4. Dr. Dhawan learned senior counsel appearing for the appellants, contended that the High Court while exercising its power of supervisory jurisdiction of a writ of certiorari is called upon to examine the correctness of the conclusion arrived at by the inferior tribunal and will be justified in interfering with those conclusions if the inferior tribunal either has admitted inadmissible evidence under consideration or has rejected any admissible piece of material or that the conclusion is such which cannot be said to be a reasonable one on the materials on record or that the finding is based on no evidence. These being the parameters for exercise of the power, the High Court should have limited its consideration only to the materials on which the prescribed authority and appellate authority under the Act came to the conclusion and the High Court was not called upon to examine the larger issue about the constitutionality and legality of a divorce made by a Muslim male by uttering talaq three times at one sitting. Dr. Dhawan also urged that the conclusion of the prescribed authority as well as that of the appellate authority cannot be sustained in law since the judgment is not based on the relevant materials. So far as the first submission of Dr. Dhawan is concerned, we find force in the same as in our opinion in the writ petition filed by the tenure holder and his wife, it was not necessary for the court to examine a larger issue on the question of the constitutionality and validity of a divorce by a Muslim man by uttering 'talaq' thrice in one sitting. We, therefore, do not intend to delve into that question and in our opinion the aforesaid conclusion of the High Court was not required to be gone into in the case in hand and the said conclusion would not operate as law of the land until and unless the same arises in an appropriate case and decided accordingly. So far as the second contention of Dr. Dhawan is concerned we, however, do not agree with the same and after perusing the order of the prescribed authority as well as that of the appellate authority, we do not find any error of law much less any error apparent on the face of the order which required to be corrected by issuance of a writ of certio-rari. The materials on the basis of which the conclusion of the prescribed authority as well as that of the appellate authority was based cannot be said to be on irrelevant materials nor the ultimate conclusion can be said to be one without any evidence for the same. In that view of the matter the ultimate determination of the ceiling land in the hand of the surplus holder does not require any interference by the Court. These appeals are, therefore, disposed of accordingly.

5. All applications filed in these matters also stand disposed of.

In Crl. A. No. 699/1993

6. This appeal stands disposed of in terms of our judgment delivered today in crl. appeal Nos. 213-216/1996.

In WP(C) No. 792/1994

7. This writ petition was filed as a counterblast to criminal appeals nos. 213-216/1996 which have already been disposed of by us today.

8. After going through the prayer of the writ petition and on examining the averments made in the writ petition, we find that there is no material on the basis of which the Court is in a position to grant any appropriate relief. This writ petition accordingly stands dismissed.

In Crl. A. Nos. 213-216/96 and 569/95

9. These appeals raise the question, as to whether a magistrate is entitled to invoke his jurisdiction under Section 125 of the Code of Criminal Procedure (Cr. P.C.) to grant maintenance in favour of divorced Muslim women.

10. Subsequent to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (for short "the Act") as it was considered that the jurisdiction of the magistrate under Section 125 Cr. P.C. can be invoked only when the condition precedent mentioned in Section 5 of the Act are complied with, in the case in hand, the magistrate came to a finding that there has been no divorce in the eye of law and as such, the magistrate has the jurisdiction to grant maintenance under Section 125 of the Cr. P.C. This finding of the magistrate has been upheld by the High Court. The validity of the provisions of the Act was for consideration before the constitution bench in the case of Danial Latifi and Anr. v. Union of India. In the said case by reading down the provisions of the Act, the validity of the Act has been upheld and it has been observed that under the Act itself when parties agree, the provisions of Section 125 Cr. P.C. could be invoked as contained in Section 5 of the Act and even otherwise, the magistrate under the Act has the power to grant maintenance in favour of a divorced woman, and the parameters and considerations are the same as those in Section 125 Cr. P.C.. It is undoubtedly true that in the case in hand, Section 5 of the Act has not been invoked. Necessarily, therefore, the magistrate has exercised his jurisdiction under Section 125 Cr. P.C. But, since the magistrate retains the power of granting maintenance in view of the constitution bench decision in Danial Latifi's case (supra) under the Act and since the parameters for exercise of that power are the same as those contained in Section 125 Cr. P.C., we see no ground to interfere with the orders of the magistrate granting maintenance in favour of a divorced Muslim woman. In fact, Mr. Qamaruddin, learned counsel appearing for the appellants, never objected to pay maintenance as ordered by the magistrate. But he seriously disputes the findings of the magistrate on the status of the parties and contends that the magistrate was wholly in error in coming to the conclusion that there has been no divorce between the parties in the eye of law.

11. In view of our aforesaid conclusion, it is not necessary for us to examine the correctness of the finding on the status of the parties, inasmuch as that finding was merely for the purpose of exercising jurisdiction under Section 125 Cr. P.C. and has no bearing at all in deciding the status of the parties.

12. These appeals stand disposed of accordingly.