

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****PUBLIC INTEREST LITIGATION NO. 166 OF 2016**

Shrikrishna Eknath Godbole .. Petitioner
versus
The Union of India & Ors. .. Respondents

Ms Sanjukta Dey for Petitioner.
Mr. P. P. Kakade – AGP for State.

**CORAM: DR. MANJULA CHELLUR, C. J. AND
M. S. SONAK, J.**

DATE : 21 OCTOBER 2016

P.C.:

1] Heard Ms. Dey, learned counsel for the petitioner and Mr. Kakade, learned AGP for the State.

2] The petitioner, an Advocate aged 82 years, practicing in Solapur, by way of public interest litigation seeks declaration that Section 56 of the Code of Civil Procedure, 1908 (CPC) is ultra vires being violative of Articles 14 and 15 of the Constitution of India.

3] ***Guruvayoor Devaswom Managing Committee vs. C. K. Rajan***¹, the Hon'ble Supreme Court has summarised the principles evolved in the matter of entertainment of public interest litigations in paragraph 50. In sub paragraph xi one of the principle stated, reads thus :

“(xi) Ordinarily, the High Court should not entertain a writ petition by way of public interest litigation questioning the constitutional or validity of a statute or a statutory rule.”

¹ (2003) 7 SCC 546

4] Applying the aforesaid principle, we see no reason to entertain the present petition instituted in public interest questioning the constitutional validity of section 56 of CPC.

5] Even otherwise, we have considered the contentions raised by Ms Dey but we are unable to agree that section 56 of CPC which prohibits arrest or detention of women in the execution of the decree for the payment of money, violates the principle of equality enshrined in Articles 14 and 15 of the Constitution of India. Taking into consideration the object of such provision, the classification between men and women is quite reasonable, and the classification has sufficient nexus with the object. Article 14 is of general application and must be read with other provisions which set out the ambit of fundamental rights. Sex is a sound classification and though there can be no discrimination in general on that ground, the Constitution itself provides for special provision in case of women and children. That apart, whilst Article 15(1) of the Constitution of India provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them, Article 15(3), in terms provides that nothing in Article 15 shall prevent the State from making any special provision for women and children. According to us, Section 56 of the CPC, which makes special provision for women, is clearly a provision relatable to Article 15(3) of the Constitution of India, and therefore, there is no reason to declare the same as unconstitutional.

6] In ***Air India Cabin Crew Association vs. Yeshawinee Merchant & Ors.***², the Hon'ble Supreme Court has held that the Articles 15 and 16 of the Constitution of India prohibit discriminatory

² AIR 2004 SC 187

treatment but not preferential or special treatment to women, which is a positive measure in their favour. At paragraphs 38 and 39, the Supreme Court has held thus :

“38. *Article 14 of the Constitution mandates that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Clauses (1) and (2) of Article 15 prohibit State from discriminating any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Article 16 which contains fundamental right of equality of opportunity in matters of public employment, by sub-clause (2) thereof guarantees that "No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State".*

“39. *Article 16(2) prohibits discrimination only on sex but clause 3 of Article 15 enables the State to make 'any special provision for women and children'. Article 15 and 16 read together prohibit direct discrimination between members of different sexes if they would have received the same treatment as comparable to members of the opposite gender. **The two Articles do not prohibit special treatment of women. The constitutional mandate is infringed only where the females would have received same treatment with males but for their sex.***”

[Emphasis supplied]

7] The petitioner, at paragraph 5(k) has raised the following ground in the context of Article 15(3) of the Constitution of India.

“k. *It is submitted that Article 15 of the Constitution of India prohibits discrimination on grounds of religion, race, caste, sex or place of birth. Although under Article 15(3), the State is empowered to make special provision made for women. However it is argued that Article 15(3) should be confined only to provisions which are beneficial to women and should not be used to give them a license to commit and abet a crime with impunity. Therefore, this provision deserves to be struck down as being ultra vires Article 14 and Article 15.*”

8] In **Yusuf Abdul Aziz vs. State of Bombay & Anr.**³, a virtually identical contention was rejected by the Hon'ble Supreme Court in the context of Section 497 of the Indian Penal Code. Paragraphs 5 and 6 of the said judgment, read thus:

"5. It was argued that clause (3) should be confined to provisions which are beneficial to women and cannot be used to give them a licence to commit and abet crimes. We are unable to read any such restriction into the clause; nor are we able to agree that a provision which prohibits punishment is tantamount, to a licence to commit the offence of which punishment has been prohibited.

6. Article 14 is general and must be read with the other provisions which set out the ambit of fundamental rights. Sex is a sound classification and although there can be no discriminate in general on that ground, the Constitution itself provides for special provisions in the case of women and children. The two articles read together validate the impugned clause in S. 497, Penal Code."

9] Finally, in case of **Cyril Britto vs. Union of India**⁴ the Division Bench of the Kerala High Court has specifically rejected the contention that section 56 of CPC which protects women from arrest or detention in execution of money decree is *ultra vires* Articles 14 and 15 of the Constitution of India. At paragraphs 8, 9 and 10, the High Court has observed thus :

"8. It is undoubtedly true that discrimination on the basis of sex alone is not permissible. However, in the present case, sex is not the sole basis. It is recognition of a reality. Still further, the Constitution makers had clearly laid down that it shall be permissible to make special provision for women. The protection afforded by S. 56 is a special provision calculated to ensure that a woman judgment-debtor is not put to the

3 AIR 1954 SC 321

4 AIR 2003 Kerala 259

ignominy of arrest and detention in civil prison in execution of a money decree. In our view, this limited protection is clearly referable to the provision contained in Article 15(3) of the Constitution.

9. Mr. Chacko submits that there is no basis for such a provision when the Code itself permits arrest and detention of women under various provisions.

10. The contention cannot be accepted. Under the Code it is permissible to arrest and detain a woman who violates an injunction. It is also permissible to attach her property in case she does not carry out her obligations under a decree for restitution of conjugal rights. In both the situations, she faces the consequences of her own actions. **However, keeping in view the prevailing customs, the Legislature has considered it appropriate to grant women a special protection against arrest and detention in the execution of a money decree. The legislative object is basically to grant a limited protection. For this limited purpose, Article 15(3) protects the provision.**"

[Emphasis supplied]

10] Therefore, following the law laid down by the Supreme Court and agreeing with the view taken by the Kerala High Court, we dismiss this petition. There shall however, be no order as to costs.

CHIEF JUSTICE

(M. S. SONAK, J.)