

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

940 WRIT PETITION NO.661 OF 2022

REKHA ANIL SALWAY AND ANOTHER
VERSUS
POOJA SWAPNIL SALWAY AND ANOTHER
...

Advocate for Petitioners : Mr Prakash Bhaushaeb Shirsath

Advocate for Respondent No. 1 : Mr P.D. Jarare

Advocate for Respondent No. 2 : Mr Girish Rane

CORAM : SANDEEP V. MARNE, J.
DATE : 8th DECEMBER, 2022

PER COURT :

1. By this petition, petitioners challenge order dated 01.01.2022 passed by the 16th Jt Civil Judge, Senior Division, Ahmednagar rejecting their application for stay of proceedings in Civil Misc. Application No. 117/2019 till final disposal of the Criminal Case No. 2513/2021.

2. Petitioners are parents of the deceased and respondent No.1 is his wife. It is accusation of the parents is that respondent No. 1/wife is responsible for suicide of their son. On that accusation, FIR has been lodged by petitioners which has resulted in lodging of Criminal Case No. 2513/2021 in the Court of Chief Metropolitan Magistrate at Bangalore.

3. Respondent No.1 has filed Civil Misc. Application bearing No. 117/2019 for grant of succession certificate under Section 372 of the Indian Succession Act, 1925, in which petitioners are impleaded as respondent Nos. 1 and 2. Petitioners filed application at Exh. 16 seeking

stay of the Civil Misc. Application No.117/2019 till the conclusion of Criminal Case No. 2513/2021 on the ground that respondent No.1 being responsible for suicide of their son, is not entitled to succeed his estate. The application has been turned down by order dated 01.01.2022, which is challenged in the present petition.

4. Appearing for petitioners Mr Shirsath, learned counsel would submit that the entire property which stands in the name of petitioners' son, as well as all insurance policies have been purchased by petitioners out of their own funds. He would further submit that the son has committed suicide on account of conduct of respondent No.1 and that respondent No.1 is already facing criminal prosecution under Section 306 of the Indian Penal Code. Relying on the provisions of Section 25 of the Hindu Succession Act, Mr Shirsath would contend that respondent No.1/wife would not be entitled to succeed to the estate of their deceased son. In support of his contention, he relies upon an interim order dated 14.07.2021 of the Delhi High Court in case of **Shalender Kumar Vs. Union of India in Writ Petition No. 6538/2021**.

5. Per contra, Mr Jarare, learned counsel appearing for respondent No.1/wife would oppose the petition and support the order of the trial Court. He would submit that Section 25 of the Hindu Succession Act does not include in its ambit the offence of suicide. He would further submit that mere allegations made by the parents accuses respondent No.1/wife for being responsible for suicide their son cannot be a reason to stay the proceedings for issuance of succession certificate. So far as the

contention of Mr Shirsath about property being purchased by the parents, Mr Jarare would contend that the issue would ultimately be decided on merits as and when the proceedings are taken to their logical end. He would submit that petitioners are unnecessarily delaying decision of the proceedings for issuance of succession certificate. In support of his contention, Mr Jarare would rely upon the following Judgments.

- (i) Talla Palli Kasi Visalakshmi @ Visalakshmi Vs. Tallapalli Venkata Vijayalakshmi & Anr. Reported in 2003 SCC Online AP 1062
- (ii) Suresh Kumar Vs. Sanjana and others reported in 2012 SCC Online P&H 2469
- (iii) Sumesh Devi Vs. The Union of India and 3 others in Writ Petition No. 9820 of 2020
- (iv) Sangaraboina Sreenu Vs. State of AP reported in (1997) 5 SCC 348

6. Mr Girish Rane, learned counsel appearing for respondent No.2 would also oppose the petition and support the submissions of Mr Jarare.

7. Rival contentions of the parties now fall for my consideration.

8. Since the entire case of petitioners is premised on the provisions of Section 25 of the Hindu Succession Act, it would be appropriate to reproduce the same as under :-

25. Murderer disqualified.—A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.

9. Thus, plain reading of Section 25 would indicate that it disqualifies only a person who commits murder or abets the commission of murder. All other offences are excluded from the ambit of Section 25 of the Act. Section 306 of IPC relating to abetment of suicide has not been included within the ambit of Section 25 of the Act.

10. This issue is otherwise no more *res integra* and has already been decided in number of Judgments cited by Mr Jarare as under :

(i) In *Talla Palli Kasi Visalakshmi @ Visalakshmi* (supra), the Andhra Pradesh High Court has held in para No. 22 as under :-

22. A direct examination of section 25 of the said Succession Act, 1956, and even a superficial reading thereof, not to speak of any deep or, critical study thereof, in my opinion, will make it, manifest and striking, that, the statutory bar, imposed thereby, is only, in respect of a legal heir, firstly, who commits murder, or, secondly, who abets commission of murder, that too, such murder should be in furtherance of the murderer's who so murdered with Aim, or object to succeed to the property of the murdered (Deceased) An analysis, thereof, and, critical study thereof, will make the same manifest, striking and beyond doubt.

(ii) *Suresh Kumar* (supra), the Bench at Punjab and Haryana High Court has held as under :-

Counsel for the petitioner contended that respondent no.1, having abetted commission of suicide by her husband, is not entitled to interim maintenance from the petitioner in view of Section 25 of the Act. The contention is completely misplaced, frivolous and meritless. Section 25 of the Act disinherits the murderer from inheriting the property of the person murdered or any other property in furtherance of the succession. In the instant case, however, it is not even the case of the petitioner that respondent No.1 had murdered her husband. On the contrary, the allegation against respondent no.1 was that she abetted commission of suicide by her husband.

Consequently, Section 25 of the Act, is by no stretch, applicable to disinherit respondent no.1. Secondly, question of inheritance is not an issue in this revision petition. On the contrary, the question of interim maintenance is being adjudicated upon. Section 25 of the Act has no applicability to this issue. Thirdly, counsel for the petitioner concerned that respondent no.1 has since been acquitted by the trial court in the aforesaid case under Section 306 IPC, although appeal filed by the petitioner against said acquittal is pending consideration in this Court. In view of acquittal of respondent no.1 in the aforesaid case also, the aforesaid contention has to be rejected.

(iii) In *Sumesh Devi* (supra), Allahabad High Court has held as under :-

It becomes pertinent to note that Section 25 of the 1956 Act disqualifies a person who has committed murder or has abetted the commission of murder from inheriting the property of the deceased. As is evident from a plain reading of that provision, it does not extend to an allegation of abatement of suicide. Learned counsel has not pressed any other provision in aid of his submission. He has also not placed for the consideration of the court any other provision statutory or otherwise in terms of which the recorded beneficiary may be divested the right to receive the remainder dues of the deceased. In view of the aforesaid, the Court finds no merit in the petition which shall stand **dismissed**.

(iv) In *Sangaraboina Sreenu*, the Hon'ble Apex Court has held that offences under Section 302 IPC and 306 IPC are of two distinct and different categories. Para No. 2 of the Judgment as under :-

2. This appeal must succeed for the simple reason that having acquitted the appellant of the charge under Section 302 IPC – which was the only charge framed against him – the High court could not have convicted him of the offence under Section 306 IPC. It is true that Section 222 CrPC for the two offences are of distinct and different categories. While the basic constituent of an offence under Section 302 IPC is homicidal death, those of Section 306 IPC are suicidal death and abetment thereof.

11. Thus, the provisions of Section 25 of the Hindu Succession Act as well as the aforesaid Judgments, make it abundantly clear that a person accused of abetment of suicide cannot be disqualified under Section 25 of the Act.

12. The Petition therefore, fails and the same is dismissed without no orders as to costs.

[SANDEEP V. MARNE, J.]

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