

=====Preamble=====

This judgement was collected from Judis website of Govt. of India. Some notes or excerpts may be made by Vinayak. Vinayak is a member of SIF - Save Indian Family Foundation. SIF is committed to fighting FALSE dowry cases and elder abuse. SIF also fights for Gender Equality and a fair treatment of law abiding Indian men. Should you find the dictum in this judgement or the judgement itself repealed or amended or would like to make improvements, please write to e _ vinayak @ yahoo dot com (please remove spaces and change dot to ".")

=====Excerpts=====

"...In the present case we are of the opinion that this is not fit case to be entertained in exercise of our discretion under Article 136.

The appellant has also filed a maintenance petition against her husband. What can she possibly get by prosecuting him as well as his family members?

The appellant filed the criminal case under Section 498A etc. not only against her husband but also against her husband's father, mother, brother, sister, etc.

In exercise of our discretionary jurisdiction under Article 136, we are not inclined to interfere with the impugned Judgment of the High Court quashing the criminal case filed by the appellant.

After all, the appellant will not get any benefit by sending her husband or his family members to jail. She is pursuing her maintenance case, and if she is so advised she can also file a suit for damages, which if filed will be decided on its own merits."

=====judgement=====

CASE NO.: Appeal (crl.) 188 of 2007 - N. Suriyakala V A. Mohandoss & Ors.

PETITIONER: N. Suriyakala

RESPONDENT: A. Mohandoss & Ors.

DATE OF JUDGMENT: 12/02/2007

BENCH: S. B. Sinha & Markandey Katju

JUDGMENT: J U D G M E N T (arising out of Special Leave Petition (Crl.) No.2481 of 2006)

MARKANDEY KATJU, J.

Leave granted.

This appeal has been filed against the impugned judgment of the Madras High Court dated 1.8.2003 in Cr.O. P. No.24782 of 2003. Heard learned counsel for the parties and perused the record. The special leave petition was filed 978 days after the delivery of the impugned judgment i.e. after a delay of 888 days. We are not satisfied about the explanation given in the delay condonation application and hence in our opinion the appeal is liable to be dismissed on this ground alone.

Apart from that, we may note that this appeal has been filed against the impugned judgment of the Madras High Court dated 1.8.2003 by which it quashed the criminal case instituted by the appellant against her husband who is respondent in this case being Crime No.35 of 2000 under Sections 498A and 406 IPC read with Section 4 of the Dowry Prohibition Act.

Admittedly the appellant has also filed a maintenance case against the respondent. The appellant and respondent were married with each other on 14.11.1996 but the marriage did not work out. The husband had filed a petition before the First Additional Family Court, Chennai seeking a declaration that his marriage with appellant was null and void but he withdrew that petition stating that he wishes to resume marital life and that petition was dismissed by the Family Court on 9.7.2003.

By the impugned judgment the High Court relying on the decision of this Court in B.S. Joshi and Ors. vs. State of Haryana & Anr. AIR 2003 SC 1386 quashed the criminal case filed by the appellant against her husband. It is against this judgment of the High Court dated 1.8.2003 that this appeal has been filed by the

wife-appellant under Article 136 of the Constitution.

In this connection we may clarify the scope of Article 136. Article 136 of the Constitution is not a regular forum of appeal at all. It is a residual provision which enables the Supreme Court to interfere with the judgment or order of any court or tribunal in India in its discretion.

Article 136(1) of the Constitution states :

"Article 136(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India."

The use of the words "in its discretion" in Article 136 clearly indicates that Article 136 does not confer a right of appeal upon any party but merely vests a discretion in the Supreme Court to interfere in exceptional cases vide *M/s. Bengal Chemical & Pharmaceutical Works Ltd. Vs. Their Employees* AIR 1959 SC 633(635), *Kunhayammed & Ors. Vs. State of Kerala & Anr.* 2000(6) SCC 359 and *State of Bombay Vs. Rusy Mistry* AIR 1960 SC 391(395).

In *Municipal Board, Pratabgarh & Anr. Vs. Mahendra Singh Chawla & Ors.* 1982(3) SCC 331 and in *Chandra Singh Vs. State of Rajasthan* AIR 2003 SC 2889 (vide para 43 & 45), this Court observed that under Article 136 it was not bound to set aside an order even if it was not in conformity with law, since the power under Article 136 was discretionary.

Though the discretionary power vested in the Supreme Court under Article 136 is apparently not subject to any limitation, the Court has itself imposed certain limitations upon its own powers vide *Ram Saran Das and Bros. Vs. Commercial Tax Officer, Calcutta & Ors.* AIR 1962 SC 1326(1328) and *Kunhayammed Vs. State of Kerala* 2000(6) SCC 359 (para 13). The Supreme Court has laid down that this power has to be exercised sparingly and in exceptional cases only.

Thus, in *Pritam Singh Vs. The State* AIR 1950 SC 169, this Court observed (vide para 9) as under :-

"On a careful examination of Art.136 along with the preceding article, it seems clear that the wide discretionary power with which this Court is invested under is to be exercised sparingly and in exceptional cases only, and as far as possible a more or less uniform standard should be adopted in granting special leave in the wide range of matters which can come up before it under this article."

In *Tirupati Balaji Developers Pvt. Ltd. Vs. State of Bihar* AIR 2004 SC 2351, this Court observed about Article 136 as under :-

"It is an extraordinary jurisdiction vested by the Constitution in the Supreme Court with implicit trust and faith, and extraordinary care and caution has to be observed in the exercise of this jurisdiction. Article 136 does not confer a right of appeal on a party but vests a vast discretion in the Supreme Court meant to be exercised on the considerations of justice, call of duty and eradicating injustice."

In *Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai* AIR 2004 SC 1815 (para 33), this Court

observed as under :-

"The discretionary power of the Supreme Court is plenary in the sense that there are no words in Article 136 itself qualifying that power. The very conferment of the discretionary power defies any attempt at exhaustive definition of such power. The power is permitted to be invoked not in a routine fashion but in very exceptional circumstances as when a question of law of general public importance arises or a decision sought to be impugned before the Supreme Court shocks the conscience. This overriding and exceptional power has been vested in the Supreme Court to be exercised sparingly and only in furtherance of the cause of justice in the Supreme Court in exceptional cases only when special circumstances are shown to exist."

In the same decision this Court also observed as under :-

"It is well settled that Article 136 of the Constitution does not confer a right to appeal on any party; it confers a discretionary power on the Supreme Court to interfere in suitable cases. Article 136 cannot be read as conferring a right on anyone to prefer an appeal to this Court; it only confers a right on a party to file an application seeking leave to appeal and a discretion on the Court to grant or not to grant such leave in its wisdom. When no law confers a statutory right to appeal on a party, Article 136 cannot be called in aid to spell out such a right. The Supreme Court would not under Article 136 constitute itself into a tribunal or court just settling disputes and reduce itself to a mere court of error. The power under Article 136 is an extraordinary power to be exercised in rare and exceptional cases and on well-known principles."

In *Narpat Singh Vs. Jaipur Development Authority* (2002) 4 SCC 666, this Court observed as under :-

"The exercise of jurisdiction conferred by Art. 136 of the Constitution on the Supreme Court is discretionary. It does not confer a right to appeal on a party to litigation; it only confers a discretionary power of widest amplitude on the Supreme Court to be exercised for satisfying the demands of justice. On one hand, it is an exceptional power to be exercised sparingly, with caution and care and to remedy extraordinary situations or situations occasioning gross failure of justice; on the other hand, it is an overriding power whereunder the Court may generously step in to impart justice and remedy injustice."

In *Ashok Nagar Welfare Association Vs. R.K. Sharma* AIR 2002 SC 335, this Court observed that even in cases where special leave is granted, the discretionary power vested in the Court continues to remain with

the Court even at the stage when the appeal comes up for hearing.

Nowadays it has become a practice of filing SLPs against all kinds of orders of the High Court or other authorities without realizing the scope of Article 136. Hence we feel it incumbent on us to reiterate that Article 136 was never meant to be an ordinary forum of appeal at all like Section 96 or even Section 100 CPC. Under the constitutional scheme, ordinarily the last court in the country in ordinary cases was meant to be the High Court. The Supreme Court as the Apex Court in the country was meant to deal with important issues like constitutional questions, questions of law of general importance or where grave injustice had been done. If the Supreme Court entertains all and sundry kinds of cases it will soon be flooded with a huge amount of backlog and will not be able to deal with important questions relating to the Constitution or the law or where grave injustice has been done, for which it was really meant under the Constitutional Scheme. After all, the Supreme Court has limited time at its disposal and it cannot be expected to hear every kind of dispute.

In the present case we are of the opinion that this is not fit case to be entertained in exercise of our discretion under Article 136.

The appellant has also filed a maintenance petition against her husband. What can she possibly get by prosecuting him as well as his family members? The appellant filed the criminal case under Section 498A etc. not only against her husband but also against her husband's father, mother, brother, sister, etc. In exercise of our discretionary jurisdiction under Article 136, we are not inclined to interfere with the impugned Judgment of the High Court quashing the criminal case filed by the appellant. After all, the appellant will not get any benefit by sending her husband or his family members to jail. She is pursuing her maintenance case, and if she is so advised she can also file a suit for damages, which if filed will be decided on its own merits. With the above observations, this appeal is dismissed.