

Radhesyam Vs. Pushpkala

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Court : Madhya Pradesh

Decided On : Jan-29-2013

Appellant : Radhesyam

Respondent : Pushpkala

Advocate for Pet/Ap. : Shri. Sanjay Gupta

Judgement :

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR SINGLE BENCH :
HONBLE MR. JUSTICE N.K.GUPTA, J.Criminal Revision No.1323/2008
Radhesyam VERSUS Pushpkala Shri Sanjay Gupta, counsel for the applicant.
None for the respondent.

ORDER

(Passed on the 29th day of January, 2013) The applicant has preferred this revision against the order dated 9.4.2008 passed by the learned First Additional Sessions Judge Betul in Criminal Revision No.1 of 2008 whereby a sum of Rs.1000/- was granted as maintenance to the respondent whereas the JMFC Betul (Shri Girish Dixit) in MJ.No.149/2006 vide order dated 19.12.2007 has dismissed the maintenance application under Section 125 of the Cr.P.C.

2. The facts of the case are that, the respondent moved an application under Section 125 of Cr.P.C that the marriage of the respondent took place with the

present applicant in Arya Samaj Temple on 10.9.2001. After sometime a forceful abortion was done to the respondent and thereafter, the applicant started residing in adultery with one woman Sapna and therefore, the respondent was bound to live separately and therefore, she claimed a sum of Rs.3000/- as maintenance.

3. The applicant denied the application of the respondent. It was pleaded that she was living separately without any reason. The applicant was not living with any woman. He has to look after his parents, brothers and sisters and therefore, it was prayed that the application may be dismissed.

4. After considering the evidence adduced by both the parties, the learned Judicial Magistrate First Class dismissed the application whereas the Additional Sessions Judge in revision filed by the respondent granted a maintenance of Rs.1000/- to the respondent effective from 19.12.2007.

5. I have heard the learned counsel for the parties.

6. After considering the evidence adduced by the parties it appears that there is a dispute regarding marriage of the parties. Mansharam (PW2), brother-in-law of the respondent has accepted in para 2 that the applicant was already married with some woman and he had another wife. However, no such plea was taken by the applicant. The respondent Pushpkala (PW1) has specifically stated that an engagement of the applicant took place with Sapna, a nurse, prior to her marriage but ultimately the applicant was married to the respondent and therefore, marriage of the parties is not under dispute.

7. It is apparent from the evidence adduced by the parties that within six months of her marriage the respondent left the house of the applicant and thereafter, she never went to the house of the applicant. The respondent tried to show the reasons for not living with her husband, that an abortion was directed without her consent and the applicant was residing with a nurse Sapna. No medical report is produced in the case. It is nowhere stated by the respondent Pushpkala (PW1) that on which date alleged abortion was caused, who was the treating doctor and as to why she did not make any complaint to anyone. Mansharam (PW2), brother-in-law, of the respondent did not tell anything about that abortion and therefore,

story of abortion could not be proved.

8. Pushpkala (PW1) and Mansharam (PW2) could not establish that the applicant was residing with any other woman. Mansharam did not tell a single word about that fact and no other witness was examined to prove that fact. The applicant relied upon the letter Ex.P/5 given by CMO Betul to Smt. Sapu Satankar to seek her explanation but by that letter it would be apparent that it was issued on the complaint sent by the respondent and therefore, only by that letter it cannot be presumed that the allegations made against Smt. Sapu Satankar were correct. It was for the respondent to prove the alleged fact by herself whereas, no independent evidence was adduced to that count whereas the evidence of the respondent Pushpkala (PW1) was of hearsay nature in that matter. Under such circumstances, the respondent could not prove the fact that the applicant was residing with another woman and therefore, she failed to prove any reasonable cause as to why she was not residing with the applicant therefore, the learned JMFC has rightly held that the respondent had no reason to get the maintenance without residing with the applicant. The learned Additional Sessions Judge gave an adverse conclusion to this point without any basis.

9. Pushpkala (PW1) has stated that she required a sum of Rs.2000/- as maintenance whereas, in her application she demanded for a maintenance of Rs.3000/-. It is apparent that when the respondent and the applicant were living together and the salary of the applicant was approximately Rs.3300/- whereas the applicant was also maintaining his parents and therefore, the approximate expenditure of the respondent looking to the standard of both the parties could be of Rs.1000/-. Pushpkala (PW1) did not give any detail as to why she requires an expenditure of Rs.2000/- per month. She was residing with her sister and therefore, she did not require to pay any house rent etc. The learned Additional Sessions Judge has committed an error in assessment of the expenditure of the respondent. It is apparent that the respondent was working as an Anganwadi worker and getting an honorarium of Rs.1000/- In that job she had shown the name of her father and shown herself to be a divorcee. Under such circumstances, the respondent was earning that amount which was required for her livelihood and therefore, it cannot be said that she was unable to maintain herself. She was not

entitled to get any maintenance from the applicant on this count also.

10. When the respondent was able to maintain herself and she had no reason for not living with her husband then she is not entitled to get any maintenance. The learned JMFC has rightly dismissed her application. On the basis of the aforesaid discussion it would be clear that the respondent is not entitled to get any maintenance from the applicant. The revision filed by the applicant/husband may be accepted.

11. Consequently it is hereby accepted. The impugned order passed by the learned Additional Sessions Judge is hereby set aside and the order passed by learned JMFC is hereby confirmed.

12. Copy of the order be sent to both the Courts below along with their records.
(N.K.GUPTA) JUDGE 29 1/2013 bina

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