

Sandhya Kumari Vs. State of Bihar

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Court : Patna

Decided On : Feb-07-2000

Judge : S.N. Mishra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125; [Hindu Marriage Act, 1955](#) - Sections 24A

Appeal No. : Crl. Revision No. 616 of 1999

Appellant : Sandhya Kumari

Respondent : State of Bihar

Advocate for Def. : Kameshwar Pd. Sinha, Addl. P.P., Ganesh Pd. Singh, Sr. Adv., Rajesh Kumar Singh, Manish Kumar and Amritanshu Sinha, Advs.

Advocate for Pet/Ap. : S.N.P. Sinha, Sr. Adv., Manish Kumar Sharan, Rekha Sanker, Rakesh Kumar and Deepak Kumar, Advs.

Disposition : Application allowed

Prior history : S.N. Mishra, J. 1. In this criminal revision application the petitioner has prayed for setting aside the order dated 9.8.1999 passed by the learned Magistrate whereby he has rejected the prayer for maintenance in terms of Section 125, Cr.P.C. It appears that petitioner Sandhya Kumari has filed an application for grant of maintenance under Section 125, Cr.P.C. before the learned Chief Judicial Magistrate, Samastipur, which was registered as Misc. Case No. 46

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Judgement :

S.N. Mishra, J.

1. In this criminal revision application the petitioner has prayed for setting aside the order dated 9.8.1999 passed by the learned Magistrate whereby he has rejected the prayer for maintenance in terms of Section 125, Cr.P.C. It appears that petitioner Sandhya Kumari has filed an application for grant of maintenance under Section 125, Cr.P.C. before the learned Chief Judicial Magistrate, Samastipur, which was registered as Misc. Case No. 46 of 1999.

2. Shortly stated that case of the petitioner is that the petitioner was married the opposite party No. 2 Manish Kumar on 21.5.1986 according to Hindu customs and rituals at Samastipur. It is further alleged that father of the petitioner invested a lot of money on the marriage of the petitioner by giving clothes, jewellery, furniture, utensils, refrigerator, colour T.V., car etc. and cash according to his capacity. The opposite party-husband is an architect and is working in private sector. He made a demand of Rs. 4-5 lacs for starting business but the petitioner's parents showed their inability to fulfil his demand, as a result the petitioner is being tortured and harassed for non-fulfilment of demand. Ultimately, it is alleged that the in-laws have finally turned out the petitioner of her matrimonial house. In spite of the several attempts made from the side of the petitioner's family in order to restore the conjugal life of the petitioner and the opposite party all went in vain. It is further alleged that since the opposite party was interested for re-marriage he filed a matrimonial suit for divorce. It is alleged that the petitioner is unemployed and totally dependent on her parents since 1991 whereas the opposite party is quantified Engineer having substantial immovable property, out of which he is getting Rs. 25,000-30,000/- as per month income. The opposite party in order to get remarried, has filed a petition for divorce on 31.1.1994 which was registered as Matrimonial Case No. 2 of 1994 before the learned 2nd Additional District Judge, Sitamarhi. Ultimately, the learned Judge by his judgment and decree dated 23.8.1996 decreed the suit and directed to pay a sum of Rs. 2,500/- per month by

way of monthly allowance to the petitioner. Against the said direction, the opposite party has filed an appeal before this Court being F.A. No. 478 of 1996. Similarly, the petitioner has also challenged the judgment and decree of the Court below and, accordingly, filed an appeal before this Court being F. A. No. 429 of 1996. Both these First Appeals are pending before this Court for disposal. During the pendency of the matrimonial suit, the learned Judge directed the opposite party to pay maintenance pendente lite and cost of litigation to the petitioner in terms of Section 24 of the Hindu Marriage Act retrospectively w.e.f. March 1994, by his order dated 97.1996. Against the order directing to pay the maintenance, the opposite party has challenged the order by filing Civil Revision No. 1292 of 1996 and by order dated 21.1.1996 the said order of ad interim maintenance was set aside. It is alleged that since the petitioner is not getting a single farthing from the opposite party in terms of the judgment and decree passed by the Court below, she has filed application for maintenance under Section 125, Cr.P.C for grant of maintenance as she has no source of income and totally depends upon her parents. The learned Magistrate has refused to grant maintenance mainly on two grounds; firstly, that because of the decree of divorce passed by the Civil Court she cannot be said to be the wife for grant of maintenance under Section 125, Cr.P.C. and, secondly, having regard to the fact that she has really been granted maintenance under the provisions of the Hindu Marriage Act, she cannot claim the maintenance under the provisions of the Code of Criminal Procedure.

3. The reasons assigned by the learned Magistrate cannot be accepted for the simple reason that the divorced wife is equally entitled to maintenance in terms of Section 125, Cr.P.C. The Explanation appended to Section 125, Cr.P.C. where from it appears that 'wife' includes a woman who has been divorced by, or has obtained a divorce from her husband and has not remarried. The said Explanation appended to Section 125, Cr.P.C. reads thus :

'(a) 'minor' means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875), is deemed not to have attained his majority;

(b) 'wife' includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.....'

Admitted position is that the petitioner has not remarried as yet.

4. The second reason assigned by the teamed Magistrates also seems to be misconceived one in view of the fact that the scope of Section 125, Cr.P.C. as well as Section 24 of the Hindu Marriage Act stand on different footing. It is true that the maintenance granted under the Hindu Marriage Act can be adjusted out of the amount granted under Section 125, Cr.P.C. I am supported by a decision in the case of Sudeep Chaudhary v. Radha Chaudhary, reported in AIR 1999 SC 536, wherein it has been held that when the wife is granted interim alimony both under Section 24 of the Hindu Marriage Act and under Section 125, Cr.P.C., in that event, the maintenance amount granted under Section 125, Cr.P.C. is to be adjusted against the amount awarded in matrimonial proceeding. Admittedly, not a single farthing has been paid to the petitioner as yet in terms of the decree passed by the Civil Court. In that view of the matter, the petitioner, being a wife though divorced one, is still entitled to the maintenance in terms of Section 125, Cr.P.C. However, the amount of maintenance allowed under the provisions of Hindu Marriage Act is subject to adjustment of the amount granted in terms of Section 125, Cr.P.C.

5. After having heard the learned Counsel for the parties and going through the materials on record, the order dated 9.8.1999 passed by the learned Magistrate is hereby, set aside. This application is, accordingly allowed.

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