

Manjula Das Vs. Bibekananda Das

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Court : Guwahati

Decided On : May-03-2006

Judge : I.A. Ansari, J.

Appellant : Manjula Das

Respondent : Bibekananda Das

Judgement :

I.A. Ansari, J.

1. The petitioner instituted, as 1st Party, a proceeding, under Section 125 Cr.P.C., seeking monthly allowance from the opposite party herein, for maintenance of her ownself as the wife of opposite party herein and also for her minor child on the ground that the said child was borne to her out of her wedlock with the opposite party. This proceeding gave rise to Misc. Case No. 11/2004. The proceeding was contested by the opposite party herein, as second party, by filing his written statement. In support of their respective cases, both the parties adduced evidence by examining three witnesses each, whereupon the learned Additional Chief Judicial Magistrate, Sonitpur, Tezpur, passed an order, on 30.9.2005, directing the opposite party herein to pay Rs. 1,000 per month as maintenance allowance to the 1st Party and Rs. 500 per month as maintenance to the minor child aforementioned with further direction that the order for maintenance, so given, shall come into force with effect from the date of passing of the order, i.e.,

30.9.2005.

2. Aggrieved by the order, dated 30.9.2005, aforesaid, the 1st party has filed this revision, her grievance being that in the facts and circumstances of the present case, the learned court below ought to have granted maintenance allowance from the date of making of the application for maintenance rather than from the date of making of the order for maintenance.

3. I have heard Mr. B. Malakar, learned Counsel for, the First party-petitioner and Mr. S.C. Biswas, learned Counsel for the Second party-Opposite Party.

4. While considering the present revision, what needs to be noted is that it is Sub-section (2) of Section 125 Cr.P.C., which contains the provisions with regards to the date on which an order for maintenance may become effective. It is, therefore, necessary to closely examine Section 125(2). Sub-section (2) of Section 125 read thus, 'Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.'

5. A microscopic reading of Sub-section (2) of Section 125 Cr.P.C. makes it clear that maintenance allowance shall be payable, ordinarily, from the date of the making of the order for maintenance and, if specifically directed, from the date of making of the application for maintenance. Clearly, therefore, an order for maintenance, unless, otherwise, specified, shall come into effect from the date of the making of the order for maintenance and not from the date of making of the application for maintenance. It is, thus, clear that it is for the Magistrate, who comes in seisin of a maintenance proceeding, to determine whether the maintenance allowance shall be payable from the date of the order directing payment of maintenance or from the date of making of the application for maintenance. Though exercise of this power by the learned Magistrate is discretionary, such an exercise cannot be arbitrary. It will, therefore, depend on the facts and circumstances of the given case as to whether the maintenance allowance shall be made payable from the date of the order directing payment of maintenance allowance or from the date of making of the application for

maintenance.

6. rearing in mind the position of law indicated hereinabove, when I revert to the case at hand, what attracts my eyes, most prominently, is that the Second party contested the proceeding tooth and nail by not only that he (Second party) filed his written statement disclaiming his liability and cross-examined the witnesses of the First party, but that he (Second party) also adduced evidence by examining as many as three witnesses. In the case at hand, the proceeding was instituted, on 7.2.2004, and the directions for payment of maintenance allowance were finally made on 30.9.2005. There is absolutely nothing in the materials on record to indicate that the proceeding was, in any way, delayed, due to fault, laches and/or negligence on the part of the First party. Thus, the delay, if any, in concluding the proceeding, is attributable to the Second party. Having, however, so keenly contested the proceeding, the Second party has not challenged the correctness, legality and/or propriety of the impugned order, dated 30.9.2005, directing payment of maintenance.

7. Therefore, in the facts and circumstances of the present case, it is abundantly clear that had the Second party not resisted the maintenance proceeding in the manner as he has done, disposal of the maintenance proceeding would not have taken one-and-a-half years. Considered, thus, there is no reason why the Second party ought not to have been made to pay maintenance allowance with effect from the date of making of the application for maintenance.

8. What logically follows from the above discussion is that in the case at hand, the learned Additional Chief Judicial Magistrate, Sonitpur, Tezpur, ought to have directed payment of maintenance allowance from the date of making of the application for maintenance and not from the date of the order. Viewed, thus, the directions given by the impugned order, dated 30.9.2005, to the Second party herein to pay maintenance allowance with effect from the date of making of the order, i.e., 30.9.2005, is illegal and highly improper.

9. Considering, therefore, the matter in its entirety and in the interest of justice, the Second party-Opposite party herein is hereby directed to pay to the First party-petitioner the maintenance allowance, with effect from 7.2.2004, i.e., from the date

of making of the application for maintenance. To the extent, so directed, the impugned order shall stand modified.

10. With the above observations and directions, this revision shall stand disposed of.

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