

Sukhlal Vs. Sushila

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Court : Mumbai

Decided On : Jun-20-1989

Reported in : I(1990)DMC528

Judge : B.G. Deo, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125

Appeal No. : Crl. Application No. 289 of 1989

Appellant : Sukhlal

Respondent : Sushila

Advocate for Def. : Ram Lambat, Adv.

Advocate for Pet/Ap. : A.V. Sarnaik, Adv.

Disposition : Application allowed

Judgement :

B.G. Deo, J.

1. The applicant Sukhalal is the husband of non-applicant Sushila. Sukhalal was employed as a peon and was dismissed from service. The learned Judicial Magistrate, First Class, Akola dismissed the application under Section 125 of the Criminal Procedure Code filed by non-applicant Sushila for maintenance. The

learned Magistrate held that Sushila had failed to prove that she was refused or neglected by Sukhalal. She also failed to show that Sukhalal had ill-treated her and her life was in danger at the hands of Sukhalal. That she was living with her parents is no ground to claim maintenance. So far as the income of Sukhalal was concerned, the learned Magistrate found that there was no proper proof, although admittedly Sukhalal had lost his service and there was no proof in the form of 7/12 extracts or certification of Talathi that he was owning agricultural lands or that he was engaged in a business of Loudspeaker. In revision, the learned Additional Sessions Judge, Akola allowed the application for maintenance and granted Rs. 200/- per month as maintenance to Sushila from the date of application, holding inter alia that Sukhalal was an able bodied person and possessed agricultural lands and, therefore, must be held to be capable of providing bare maintenance to the applicant Sushila.

2. Having heard Shri Lambat and Shri Sarnaik at length, it is crystal clear that there is nothing on record to show that Sukhalal had sufficient means to pay Rs. 200/- per month as maintenance to his wife, apart from the fact as to whether the wife was refused or neglected to be maintained by him or not. If Sukhalal has got agricultural lands, certainly the quantum of maintenance awarded by the learned Additional Sessions Judge could have been maintained. The learned Additional Sessions Judge was, however, is in error in holding that Sukhalal had agricultural lands without there being any record for the same and that, therefore, he was capable of providing bare maintenance to his wife. In view of this position, there is an abuse of the process of law on account of the mistaken finding recorded by the learned Additional Sessions Judge not supported by record and lest the wife may be deprived of a just maintenance, it is necessary to remand the case to the original Magistrate to call upon the wife to show that Sukhalal had, despite sufficient means, refused or neglected to maintain her.

3. In the result, the application is allowed. The order passed by the learned Additional Sessions Judge, Akola on 24th January, 1989, as well as the order passed by the learned Magistrate, First Class, Akola on 23-12-1986 on the application of non-applicant Sushila, are set aside and the matter is remanded to the learned Judicial Magistrate, First Class, Akola for a rehearing of the matter on

the question of quantum of maintenance and other points. The learned Magistrate shall re-open the case, receive , such further evidence as may be adduced by Sushila and Sukhalal and decide the application in accordance with law and in view of the provisions contained in Section 125 of the Criminal Procedure Code. The order passed by the learned Magistrate for interim maintenance shall, however, remain in force till the disposal of the application by the learned Magistrate, The application under Section 125, Cr. P.C. be disposed of within a period of four months as far as possible. The parties shall appear before the learned Magistrate, First Class, Akola on 3rd of July, 1989.

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