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Veeranna Vs. Sumitrabai

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Court : Karnataka

Decided On : Jun-20-1989

Reported in : 1991CriLJ774; I(1990)DMC49; 1989(3)KarLJ341

Judge : A.K. Laxmeshwar, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 125, 125(4) and 488(3)

Appeal No. : Criminal Revn. Petn. No. 281 of 1988

Appellant : Veeranna

Respondent : Sumitrabai

Advocate for Def. : B.S. Raikote, Adv.

Advocate for Pet/Ap. : Mahabaleshwar Goud for Shivaraj Patil

Judgement :
ORDER

1. The above Criminal Revision Petition is directed against the order dated 4-7-1988 passed by the learned Additional Sessions Judge, Gulbarga in Criminal Revision Petition No. 44/87 allowing the same by setting aside the order dated 19-3-87 passed by the learned J.M.F.C., Chittapur in C.C. No. 78/1980.

2. The facts of the case in brief are :

The petitioner is the husband of the respondent-wife. This is a revision by the husband. Respondent-wife filed a petition u/S. 125 Cr.P.C. in C.C. No. 78/1980 on the file of the J.M.F.C., Chittapur claiming the maintenance at the rate of Rs. 300/- per month. The respondent alleged that she is the wife of the petitioner-husband, her marriage with the petitioner was solemnised when she was aged about 9 years, and she was suffering from mental disease, therefore, she was taken to her parents to Ravoor village. She was treated for a period of 6 to 7 years. Thereafter she was recovered. After recovery, the parents of the respondent requested her husband to take her back to his house. However, the husband refused to take but he married another lady by name Annapurna of Mashaal village.

3. The allegation of the petitioner's wife is that she was neglected by her husband to maintain. Therefore she has filed a petition u/S. 125 Cr.P.C. in the Court of JMFC, Chittapur for her maintenance. The respondent-husband admitted that the petitioner in the trial court is his wedded wife. The marriage of petitioner and respondent took place when she was of 9 years and he was of 12-13 years old. He also inter alia contended that the petitioner's mental condition was not good. As the mental Condition of the petitioner-wife is not good, it is false to say that she was treated and she recovered. He also admits that he had married a second wife about 10 years back. It is averred in his objection statement that the husband respondent was suffering from T.B. Therefore they were kept separately in the neighbouring houses.

4. The respondent-husband has contended that just after one or two years of the marriage of the parties, he was suffering from T.B. that the petitioner was in the house of respondent for a period of one year, even after the respondent took the treatment, but it was not cured. That the mother of the petitioner also came and joined with the petitioner. That the petitioner, later on, felt that the respondent will not be cured from T.B., she offered to live separately. That this was about 14 years back.

5. The respondent-husband averred that he had no subsistence for himself to pay the maintenance prayed by his wife. He denied the facts mentioned by his wife. He also averred that the second wife and her son also living separately from the

respondent since from 1978 after taking the property and he specifically averred that he is unable to maintain her. Therefore, he prayed in the end the petition may kindly be dismissed.

6. The learned Magistrate after recording the statement of the witnesses u/S. 125 Cr.P.C. produced by the parties and hearing the arguments of the Counsel on both sides, dismissed the petition filed by the petitioner-wife.

7. Being aggrieved by the said order of dismissal the wife filed Crl. Rev. Petition No. 44/87 in the Court of Additional Sessions Judge, Chittapur. The learned Judge after hearing both the parties allowed the petition and set aside the order of the learned Magistrate and awarded a maintenance of Rs. 150/- per month to the petitioner-wife.

8. Being aggrieved by the said order, the husband filed the above Crl. Revision Petition challenging the order passed by the learned Sessions Judge, in Criminal Revn. Petition No. 44/87. This Court admitted the Revision Petition and issued an interim stay.

9. Learned Counsel Mr. Mahabaleshwar Goud for Sri Shivaraj Patil for the petitioner vehemently urged that the learned Sessions Judge erred in not taking into consideration the fact that the spouses are residing separately by mutual consent. In view of S. 125(4) of the Code of Criminal Procedure, living separately by mutual consent disentitles the wife of maintenance. In the instant case the wife by mutual consent of both is staying separately. Therefore, the learned Sessions Judge, wrongly granted maintenance to her. The learned Counsel Mr. Mahabaleshwar Goud, then submitted that the marriage took place when the parties were minors, i.e. when the wife was of 9 years and husband was 12 or 13 years old. Therefore, the marriage itself is not in accordance with law. This question of the validity of marriage was never raised in the courts below. The respondent in his written statement in unequivocal terms admitted the relationship of husband and wife and also admitted that he has taken a second wife The learned Counsel for the petitioner Mr. Goud submits that both the Courts below have not considered whether there are sufficient reasons for living separately.

10. As against this Mr. Raikote, the learned Counsel for the respondent-wife, vehemently submitted that the wife and husband are living separately in houses situated nearby, i.e. only one house is in between the houses where the spouses are residing. The question regarding validity of marriage was never raised, and therefore, it cannot be urged at this stage. He further submitted that under no circumstances, their separate living may be qualified as living separately by mutual consent as required by law. It is a question that is to be considered and decided by this Court. He submits that it is not by mutual consent and that 'mutual consent' means the wife and husband should negotiate and come to an understanding and then only that amounts to living separately by mutual consent. But here the husband-petitioner has contended that some panchayatdars were responsible to advise the wife to live together or to live separately. Even if it is on the advice of panchayatdars it does not amount to living separately by mutual consent. Therefore, the learned Counsel invites my attention to the decision rendered by the Manipur High Court, reported in Laisram v. Sakhi Devi, AIR 1965 Manipur 49 : (1965 (2) Cri LJ 785). Present S. 125 of the Cr.P.C. is the verbatim of the then S. 488 Cr.P.C. The decision is rendered by a Division Bench of Manipur High Court. Their Lordships have observed as under (para 7) :-

'The learned Counsel for the petitioner further contended that the parties are living separately for the last 10 years by mutual agreement therefore, the opposite party is not entitled to get maintenance. There is no substance in this contention. The separate living must be the result of a deliberate and express agreement between the parties. A hasty rejoinder to a husband, who in the course of a quarrel was manoeuvring for a consent from a wife, is not a consent within the meaning of the section. Similarly, living separately under an agreement settled by a panchayat to whom disputes between the husband and wife had been referred is not living separately by mutual consent. 'Mutual consent' as used in sub-section (4) means a consent on the part of the husband and wife to live apart, no matter what the circumstances may be. Where a wife refuses to live with the husband on some specific ground such as cruelty, or the fact that he is keeping another wife, it cannot be said that the husband and wife are living apart by mutual consent if the husband does not insist that the wife should live with him. Where a husband is unwilling to allow his wife to live with him, or has taken a second wife, the only

course open to such wife would be to live apart and if she, under such circumstances agreed to accept maintenance and live apart, such separate living would not be deemed to be the result of mutual consent. The test therefore should be to find out if the agreement for separate living and payment of maintenance was the outcome of the desire of both parties, independently reached by each of them, or if one of the parties was forced to submit by circumstances to such agreement.'

Learned Counsel, Mr. Raikote, submits that the facts of the present case squarely fall within the four corners of this decision. Here also the panchayatdars advised the spouses to live separately, etc. Therefore, even if they have lived separately at the instance of panchayatdars it does not amount to living separately by mutual consent. And here also petitioner in his written objections admitted that he has taken a second wife. Therefore, that cannot be said to be living separately by mutual consent. During the lifetime of the wife, if husband takes a second wife, it amounts to cruelty and this has been held in a number of cases.

11. It is also in evidence that the petitioner husband was suffering from T.B. This, the learned Counsel Sri Raikote, submits, by itself is sufficient cause to live separately, in addition to the cause of taking a second wife. The village in which this dispute arose is a small one and it appears that the parties are not so educated and brought up in advanced society. Undoubtedly, T.B. is a contagious disease. It might have created a sort of apprehension in the mind of the wife, by living together under the same roof as husband and wife and subjecting to conjugal rights, she may also contact the disease. Even if no obligation of conjugal rights is complied with by the wife, living under the same roof is not free from the danger of contacting the contagious disease. Therefore, learned Counsel Mr. Raikote, submits that it is sufficient reason to live separately also, in addition to the cause of second marriage contracted by the husband, wherein this High Court has held that if a husband contracts a marriage with another woman, the wife has a right to live separately from him. For this proposition reliance is placed on the decision reported in Kadirasad Babsab Pinjar v. Nurubmi, ILR (1978) 2 Kant 1568 : (1979 Cri LJ NOC 12). His Lordship was pleased to observe that 'as the wife of such husband who has contracted a second marriage, has a just ground to refuse

to live with him, the latter is under a legal obligation to maintain her and if he neglects to maintain her the Court will be justified in passing an order of maintenance u/S. 125 of the Code of Criminal Procedure.' In the case on hand the respondent was justified in refusing to live with the petitioner, and petitioner is under a legal obligation to maintain her and as petitioner has failed to maintain her, the Court is justified in passing an order of maintenance. Relying on this decision the learned Counsel submits that the ground of second marriage itself is enough for awarding separate maintenance. In a number of decisions of this Court this proposition of law was upheld. The said decision also relied upon a decision of the Supreme Court in Deochand v. State of Maharashtra, : 1974 CriLJ1089 . In that decision S. 488(3) of the old Code came up for consideration and it was held that it provides to the extent material that if a husband has contracted a second marriage with another woman, it shall be considered to be a just ground for his wife's refusal to live with him. It was further held as follows (para 3) :-

'As the second respondent was justified in refusing to live with the appellant, the latter was under a legal obligation to maintain her. As he has neglected to maintain her, the High Court was justified in passing the order under appeal.'

Therefore, the learned Counsel Mr. Raikote submits that all the decisions relied upon by him are applicable to the facts of the present case.

12. Now coming to the question of quantum of maintenance, learned Counsel Mr. Mahabaleshwar Goud, submitted that the husband is a poor man, eking out his livelihood by tailoring. The village in which he lives is a small village. He may not even earn Rs. 150/- as held by the District Judge, in the appeal. It is really too high, I think, in these days of abnormal price rise. To earn Rs. 150/- in tailoring is very low for him. The Court can take judicial notice of the fact that the stitching charges have gone sky high, though there is no evidence placed on record to show the same, for example a shirt which was being stitched for Rs. 8/- some years ago is now being stitched for not less than Rs. 15/- to Rs. 20/-. Therefore, the monthly income by tailoring of the petitioner taken as Rs. 150/- appears to be low. However, as there is no revision by the respondent challenging the same, it has to be accepted. Besides the petitioner-husband owns certain agricultural

lands. After appreciation of evidences, the learned Sessions Judge has computed the annual agricultural income at Rs. 7,000/- and from tailoring at Rs. 2,400/- per annum. Thus the total income of the husband would be Rs. 9,400/- per year. Therefore, the learned Sessions Judge has granted Rs. 150/- per month as maintenance to the wife.

13. The learned Counsel Mr. Goud, submits that as admitted by the petitioner, he has a second wife and three children. Therefore, he has to maintain them also. Therefore, maintenance granted at Rs. 150/- per month to the wife is highly excessive. In view of the annual income, I feel it is most reasonable and I decline to interfere with the quantum awarded by the learned Sessions Judge. For the reasons stated above I think that the order passed by the learned Sessions Judge is liable to be sustained.

14. In the result, the Criminal Revision Petition is dismissed. The order of the learned Sessions Judge, in Criminal Revision Petition No. 44 of 1987 is confirmed.

No costs.

15. Revision dismissed.

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