

Abdulmunaf Vs. Salima

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Court : Karnataka

Decided On : May-29-1978

Reported in : 1979CriLJ172

Judge : M.S. Nesargi, J.

Appellant : Abdulmunaf

Respondent : Salima

Advocate for Pet/Ap. : Sri. Tukaram S. Pai

Judgement :

ORDER

M.S. Nesargi, J.

1. These two petitions are against the order dated 8-7-1975 passed by the Chief Judicial Magistrate, Dhar-war, in Misc. Case No. 105 of 1975 under Section 125 of the Cri. P. C. 1973 (to be hereinafter referred to as the new Code). The Cr.P.C. 1898 will be hereinafter referred to as the old Code.

2. The undisputed facts are that Smt. Salima the respondent in Cr. R. P. No. 405 of 1976 and the petitioner in Cr. R. P. No. 92 of 1977 is the divorced wife of Abdulmunaf the petitioner in Cr. R. P. No. 405 of 1976 and the respondent in Cr. R. P. No, 92 of 1977. These parties would be hereinafter referred to as the wife

and husband.

3. The wife filed an application under Section 125 of the new Code praying that she is entitled to a monthly maintenance of Rs. 250/-. She claimed her right in view of the Explanation (b) to Section 125(1) of the new Code. She contended that her husband was a teacher and he was earning sufficient amount so as to afford to maintain her by giving Rs. 250/- per month. She is an S.S.L.C. According to her, she has been living with her parents in a village. The husband has an old father. He has three brothers also who, it is stated, are earning independently. The father of the husband is residing in Belgaum while during the period of the proceeding the husband was residing in Pond a.

4. The husband contended that on his divorcing his wife, he sent a demand draft by registered post to her for a sum of Rs. 1,215/- in full settlement of the amount of Mahr agreed to at the time of the marriage and the amount of maintenance that she was entitled to during the period of Iddat after the divorce, but she refused to accept the same and as such she was not entitled to maintain the petition particularly in view of Section 127(3) of the new Code. He also contended that he was drawing Rs. 450/- per month as salary and he was required to pay Rs, 70/- per month as rent towards lodging and further that he was to spend Rs. 200/- per month on himself to maintain himself and lastly that he was sending .Rs, 100/- per month to his father towards the maintenance of the father.

5. The learned Magistrate has held on facts that the husband had sent an amount of Rs. 1,215/- by a registered letter to the wife but she had refused the same, but even then the provisions of Section 127(3) would not be attracted in view of the fact that what was required by the said provision was acceptance of the amount by the wife. An extensive reference has been in this connection made to the decision of the Bombay High Court in Rukhsana Parvin v. Shaikh Mohomed, 79 Bom LR 123 : 1977 Cri LJ 1041.

6. The evidence on record discloses that the husband has sent a registered letter to- the wife and the wife refused to accept that letter. The contention of the husband is that that letter contained a demand draft for a sum of Rs. 1,215/-. This evidence would go to show that the wife had refused a registered letter addressed

to her and sent by the husband. It does not at all lead to a conclusion that the wife knew at that time that the letter contained a demand draft for Rs. 1,215/- towards Mahr amount and the maintenance amount to which she was entitled to during the Iddat period, and, hence, the finding of the learned Magistrate that she had refused to accept the amount sent by the husband, cannot be sustained. In the result, reference to the case of Rukhsana Parvin becomes unnecessary.

7. Sri Tukaram S. Pai, learned Counsel for the petitioner, pointed out the difference in the wordings in Section 488 of the old Code and Section 125 (1)(a) of the new Code. He urged that in Section 488 of the old Code, the word 'unable' was not at all attached to the word 'wife', while the same was attached to the children etc. He on this basis argued that the wife being an S.S.L.C. and also being a normal healthy woman, must be able to maintain herself, and such a presumption does arise. In support of this contention, he placed reliance firstly on the decision of the Lahore High Court in Mahomed Yar v. Ali Muhammad AIR 1941 Lah 92 : 42 Cri LJ 439. The Division Bench of the Lahore High Court has, on a reference on this question also, held that a hale and healthy person who does not suffer from any illness must be presumed to be capable of maintaining himself. He neatly relied on the decision of the Kerala High Court in Saraswati v. Madhavan : AIR1961 Ker297 . In the said decision, P. Govinda Menon, J. has observed in Para 11 as follows:

Again in this case the petitioner for whom maintenance is claimed, is aged 22 years. She is a fairly well educated lady, healthy and is not stated to be suffering from any illness. Such a person should be presumed capable of maintaining herself until the contrary is proved. The burden of proving that she is not capable of maintaining herself is on her and if she fails to adduce sufficient proof the Magistrate would be perfectly justified in disallowing her claim for maintenance.

8. The object of Section 488 of the old Code has been, by various High Courts, held to be to prevent destitution in public grounds and vagrancy, even in regard to wives. The Supreme Court has in S. Sethurathinam Pillai v. Barabara (1970) 1 SCWR 589 dealing with Section 488 of the old Code, held that the provision has been enacted with a view to provide a summary remedy for providing maintenance

and for preventing vagrancy. The same is the principle reiterated by the Supreme Court in *Bhagwan Dutt v. Kamla Devi* (1974) 2 SCWR 468 : 1975 Cri LJ 40.

9. When the object of the two provisions viz., in the two Codes is the same, I am of opinion that the attachment to the word 'unable' to the word 'wife' in Section 125(1)(a) of the new Code does not make any difference. It only means that the speedy remedy is available to a wife who is unable to maintain herself so that there should be prevention of vagrancy. What is meant by vagrancy is to be gathered by taking into consideration the ordinary dictionary meaning. The relevant meaning as gathered from the Shorter Oxford English Dictionary is 'Idle wandering with no settled habitational occupation or obvious means of support'.

10. Now it is to be seen whether a presumption as laid down by the Lahore High Court in *Mahomed Yar's case* (1941-42 Cri LJ 439) and the Kerala High Court in *Saraswathi's case* ((1961) 2 Cri LJ 640) that a normal hale and healthy person, may be fairly educated also, is presumed to be able to maintain oneself, does arise in this context. I am constrained to hold with great respect that the presumption can only be to the extent of concluding that a normal healthy person may be fairly educated, is capable of earning. It cannot extend to conclude that such earning would be sufficient to maintain such a person. What is meant by the word 'maintain' used in Section 488 of the old Code, has been the subject-matter of the decision in *Sethurathinam Pillai's case* (1970) 1 SCWR 589 and in *Bhagwan Dutt's case* (1975 Cri LJ 40 (SC)). In *Bhagwan Dutt's case* their Lordships of the Supreme Court have, in para 18 (of SCWR): (Para 19 of Cri LJ) laid down as follows:

The object of those provisions being to prevent vagrancy and destitution, the Magistrate has to find out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family. The needs and requirements of the wife for such moderate living can be fairly determined, only if her separate income also is taken into account together with the earnings of the husband and his commitments.

The same would be the meaning that is to be taken into consideration while considering Section 125(1)(a) of the new Code. In the said case before the

Supreme Court, the wife was, on the date of the application, employed as a Stenographer on a monthly salary of Rs. 600/- and the husband was earning Rs. 800/- per month, but later on when the case was pending before the Sessions Court in revision, the income of each of them had increased by Rs. 150/-. Even then some amount of maintenance was granted to the wife.

11. Sri Tukaram S. Pal pointed out from the evidence of the wife that though she has been an S.S.L.C., she has refused to work and earn and has been living with her parents and she has insisted on being maintained by the husband, and this attitude of the wife shows that she does not at all want to earn anything nor maintain herself while the burden is on her to show that in spite of her earning something she would be incapable of maintaining herself. The fact that she has refused to earn for herself may be taken into consideration while considering the quantum of maintenance that the husband is liable to contribute towards her maintenance, as is the view expressed by the Supreme Court. But, merely because she has refused to earn, does not mean that she is not at all entitled to maintenance when the clear terms of Section 125 (1)(a) of the new Code read with Explanation (b) to Section 125 (1)(a) are looked into. Therefore it will have to be held that the wife is capable of earning in view of her being a normal healthy person and educated upto S.S.L.C., but she has not taken care to earn anything for herself. That disentitles her to the full amount that she has claimed, but the contention of Sri Tukaram S. Pai that her application for maintenance is liable to be rejected, cannot, in my opinion, be accepted.

12. It is no doubt true that the petitioner has three brothers and they are earning. It is also true that the petitioner has an old father and he is to be maintained either by all the four brothers or by one of them and so on. According to the petitioner, he has been sending Rs. 100/- per month for the maintenance of his old father. To what extent that is a true fact, cannot be gathered as the evidence stands, but the fact that his income is Rs. 450/- per month and he has been living in Ponda away from Belgaum and, therefore, has to spend some amount towards rental of a lodging has to be taken into consideration. He has claimed that he is paying Rs. 70/- per month as rent. That evidence has been accepted by the learned Magistrate. The claim of the husband that he requires Rs. 200/- per month for

maintaining himself, is reasonable, and the learned Magistrate has rightly accepted it. If out of Rs. 450/- per month, an amount of Rs. 270/- is deducted, what remains with the husband would be Rs. 180/-. I have already held that the claim of the husband that he has been sending Rs. 100/- to his father for his maintenance, is not well supported, and it might or might not be true. But he has got to, in view of Section 125 of the new Code, spare some reasonable amount out of this balance towards maintenance of the wife also. At the same time, the learned Magistrate does not appear to have taken into consideration the other incidental expenses towards clothing etc. that the husband is required to meet. When these factors are taken into consideration, I am of opinion that the reasonable amount of maintenance that the husband can be asked to spare for his wife would be Rs. 70/- per month. It is ordered accordingly.

13. In view of the foregoing, the order passed by the Chief Judicial Magistrate, Dharwar, in Misc. Case No. 105 of 1975, is modified to the extent aforementioned, and both the revision petitions are disposed of accordingly.

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