

Ramashrey Vs. Pawan

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Court : Allahabad

Decided On : Dec-15-1994

Reported in : I(1995)DMC588

Judge : K.L. Sharma, J.

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

Appeal No. : Cr. Revision No. 1908 of 1993

Appellant : Ramashrey

Respondent : Pawan

Disposition : Revision dismissed

Judgement :

K.L. Sharma, J.

1. This is a revision directed against the Judgment and order dated 7.8.1992 passed by Judge Family Court, Meerut Case No. 139 of 1992. Smt. Pawan v. Ramashray Prasad Under Section 125 Cr.P.C. whereby he was pleased to determine the maintenance allowance at the rate Rs. 500/- per month in favour of the wife with effect from 2.9.1987.

2. I have heard the learned Counsel for the revisionist as well as Mr. O.P. Agarwal Counsel for the opposite party and perused the material brought on record. 'Learned Counsel for the revisionist has submitted that there has been divorce in the year 1989 and no appeal against divorce has been filed, but the learned Judge Family Court, Meerut has granted the maintenance allowance. On perusal of the judgment, I find that the Learned Judge has considered the question of divorce also, but mere divorce does not deprive the lady of her maintenance permissible under Section 125 Cr.P.C. until she remarries. Learned Counsel for the revisionist does not say that the lady has since remarried. The learned Judge has recorded a clear finding on the question and I do not find any infirmity therein.

3. Learned Counsel for the revisionist has further submitted that the lady was running a school and she was having independent source of her income to maintain herself. The Judge of the Family Court has also considered the evidence on this question and after due consideration he has recorded the finding that the lady is not running a school and does not have any independent source of income to maintain herself. This finding recorded by the learned Judge does not also call for interference.

4. Learned Counsel for the revisionist has further submitted that the income of the revisionist is not such submitted that accused as to unable him to pay maintenance allowance at the rate of Rs. 500/- per month. I find from a perusal of the judgment that the revisionist is admittedly serving the Central Government in the pay scale of Rs. 2200-4000 since before 1986 and the learned Judge has also taken into consideration that at the time of hearing the proceedings, the revisionist was getting 80 per cent dearness allowance in addition to the basic pay in that scale and consequently he has determined the monthly maintenance allowance. Comparing the income of the revisionist with the amount of maintenance permitted by the Judge, I do not find that any undue advantage has been given to the wife. Cotting an income of Rs. 4000/- per month, the revisionist can very well to pay Rs. 500/- per month to his divorce wife until she remarries. The revisionist can very well approach the Family Court for modification or cancellation of the maintenance allowance in the event of the lady entering into remarriage.

5. I do not find any ground for interference in this revision. The interim stay order dated 26.11.1993 is hereby vacated subject to the condition that if any maintenance allowance has been paid or deposited in the Court, it shall be adjusted against the claim of the maintenance with effect from 1.9.1986

The revision is dismissed with costs, which is assessed at Rs. 2000/-payable to the opposite party within 30 days from the date of this order, As regards the arrears of maintenance, the revisionist is however granted liberty to pay the amount of arrears six equal quarterly instalments beginning from January 1986, subject to the condition that if any quarterly instalment is not paid by the 10th day of following month of the quarter, this order of granting finality instalment shall stand automatically vacated.

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