

Hardev Singh Vs. State of U.P. and ors.

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SooperKanoon Citation : sooperkanoon.com/464800

Court : Allahabad

Decided On : Oct-06-1994

Reported in : II(1995)DMC624

Judge : O.P. Jain, J.

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

Appeal No. : Crl. Misc. Application No. 4450 of 1994

Appellant : Hardev Singh

Respondent : State of U.P. and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : K.C. Saxena, Adv.

Disposition : Application dismissed

Judgement :

O.P. Jain, J.

1. This is an application Under Section 482 Cr.P.C. for staying further proceeding in the case and for dismissing the application Under Section 125 Cr.P.C. filed by respondent No. 3, Smt. Maya Devi against the applicant.

2. The brief facts of the case are that applicant Hardev Singh is the husband of respondent No. 3, Maya Devi who filed an application Under Section 125 Cr.P.C. for maintenance against her husband. The applicant did not appear before the Court below and, therefore, the Court proceeded ex-parte and on 25.4.1991 Hardev Singh was ordered to pay Rs. 500/- per month to Smt. Maya Devi and Rs. 300/- per month to his daughter Chandrawati and Rs. 200/- per month for the maintenance of his son Anek Singh. It appears that the amount was not paid by the applicant and, therefore, recovery proceedings have started against the applicant. Under these circumstances Hardev Singh has filed the present application Under Section 482 Cr.P.C.

3. I have heard learned Counsel for the applicant and have gone through the record.

4. It is argued that the total amount awarded by the learned Magistrate is Rs. 1,000/- per month which is illegal because Under Section 125 Cr.P.C. the Magistrate cannot order payment of more than Rs. 500/- as a whole. This contention has no force because it has been held in AIR 1978 SC 1807, Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Ors. that the words 'in the whole' occurring in Section 125 cannot be interpreted to mean that the total award for wife, child, mother and father together cannot exceed Rs. 500/-. What the section plainly means is that the Court cannot grant more than Rs. 500/- for each one of the claimants. 'In the whole' in the context means taking all the items of maintenance together, not all the members of the family put together.

5. The second contention is that applicant Hardev Singh has renounced the world and he has become a Sadhu. Therefore, he is not liable to pay any maintenance to his wife. The learned Counsel for the applicant has cited Mayne's Hindu Law at page 689 in this connection. He also relies on paragraphs 9 to 10 of the application Under Section 125 Cr.P.C. which is Annexure-1. What the applicant-wife has stated is that her husband sometimes puts on the traditional dress of Sadhus and sometime he is dressed in Dhoti-Kurta. In the same paragraph the wife has stated that her husband is having illicit relations with several women and spends Rs. 1,000/- on those women. In para 10 she has stated that in order to

throw dust in the eyes of the police her husband puts on the robes of a 'Babaji'. In my opinion it cannot be said by any stretch of imagination that wife has admitted that her husband has renounced the world and has become a Sadhu. In this connection attention has been invited to a police report on the back of the summon which is at page 30/2 of the record. It is a copy of order sheet dated 6.11.93 in which the learned Magistrate has recorded that the warrant of arrest for the recovery of the amount has been returned by the police unexecuted with a note that Hardev Singh has become a Saint and has transferred his entire property. In my opinion, this report On the warrant is not sufficient to prove that Hardev Singh has become a Sadhu.

6. Even if it is assumed for the sake of argument that he has become a Sadhu that does not absolve him from the duty to maintain his wife and children. It was held as early as 1943 in 34 Cr.L.J. 815, Maungtin v. Madmin, that a man is not, and ought not to be, permitted by his own voluntary act to free himself from the elementary duty of maintaining his wife and children and he is amenable to the provisions of Section 488, notwithstanding the fact that he has adopted the yellow robe and become a member of the 'Sangha'.

7. It has been held by this Court in AIR 1956 Allahabad 320, Dhani Ram v. Mst. Ram Dei that the word 'means' includes earning capacity. Hence, when a man is healthy and able bodied he must be taken to have the means to support his wife.

8. In view of the above I hold that none of the contentions raised on behalf of the applicant has any force. The application Under Section 482 Cr.P.C. is hereby dismissed.