

Narendra Kumar Vs. Shobha Kumari

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Court : Allahabad

Decided On : Mar-02-1990

Reported in : II(1994)DMC192

Judge : B.P. Singh, J.

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

Appeal No. : Crl. Rev. No. 1083 of 1987

Appellant : Narendra Kumar

Respondent : Shobha Kumari

Disposition : Revision dismissed

Judgement :

B.P. Singh, J.

1. This is an application for revision against the judgment and order dated 13.7.1987 passed by Learned III Additional Sessions Judge, Budaun in Criminal Revision No. 299 of 1986.

2. The facts leading up to this application for revision may briefly be stated as follows:

Smt. Shobha Kumari, who is the wife of the applicant Narendra Kumar. had moved an application under Section 125 Cr.P.C. in the Court of C.J.M., Budaun. The application was registered as Criminal Case No. 50 of 1986. The claim of the wife was that she was married to Narendra Kumar on 12.5.1979 in accordance with Hindu religious rites. After her marriage Smt. Shobha Kumari starting living with Narendra Kumar and duly used to perform the duties of a wife. A daughter was born out of the wedlock but she died subsequently. Initially the relations were some what cordial but subsequently dispute arose as Narendra Kumar and his parents wanted more dowry. The applicant was tortured and was forced to bring Rs. 5,000/- from her parents. Effort to kill Smt. Shobha Kumari was also made by Narendra Kumar. Finally Shobha Kumari left the house of her husband and started living with her parents.

3. The application was opposed by Narendra Kumar with the allegation that there was no justification for Shobha Kumari to claim any maintenance from him.

4. Three witnesses i.e., Shobha Kumari (P.W. 1), Dinesh Kumar (P.W. 2) and Bhagwan Das Jauhari (P.W. 3) were examined on behalf of the applicant while Narindra Kumar (D.W. 1) and Hari Prasad (D.W. 2) were examined on behalf of the husband. Learned Magistrate held that Shobha Kumari was entitled to maintenance and fixed a monthly maintenance allowance of Rs. 100/-.

5. Aggrieved by the quantum of the maintenance allowance Smt. Shobha Kumari went in revision and her revision application--Criminal Revision No. 299 of 1986, was allowed by the III Additional Judge, Budaun. The order of the C.J.M, was modified to the extent that instead of Rs. 100/-per month Shobha Kumari was to get Rs. 300/- per month as maintenance allowed.

6. Aggrieved by the judgment and order of the Sessions Judge Narendra Kumar has come in revision.

7. I have heard learned Counsel for the parties. Learned Counsel for the husband--revisionist has raised two contentions. The first contention is that Shobha Kumari was not entitled to any maintenance as she has refused to live with her husband without any sufficient reason. Second contention is that the

maintenance allowance granted to Smt. Shobha Kumari by the Sessions Judge was exorbitant.

8. Regarding his first contention I may point out that learned Magistrate has held that the wife Shobha Kumari was entitled to maintenance. This finding of the Learned Magistrate was not initially challenged by the husband, Narendra Kumar, before the Sessions Judge or by way of any petition in the High Court. It was only when the maintenance allowance was enhanced by the Sessions Judge that Narendra Kumar has filed the present application for revision. In this connection I may also point out that Narendra Kumar has filed suit in the Court of Civil Judge, Bareilly (Suit No. 434 of 1986 -- Narendra Kumar v. Smt. Shobha Kumari) for dissolution of marriage. The Copy of the judgment has been filed which shows that the suit was decreed on 28.2.1987. When Narendra Kumar was taking steps for dissolution of his marriage, the wife was fully justified in not living with him. It is now well settled that even a divorced wife is entitled to maintenance. Now it is not open to Narendra Kumar to contend that the wife was not willing to come to him without any sufficient cause.

9. Coming to the second contention I may point out that it is admitted to Narendra Kumar in his evidence before the learned Magistrate that he was getting a salary of Rs. 1016.35. The entire salary is to be considered for the purpose of maintenance. He has also admitted that Shobha Kumari was continuously ill. He has also admitted that formerly She was also employed as a teacher in a school but at present she was unemployed. Under the circumstances even if the wife has failed to prove any other source of income for Narendra Kumar, I am of the view that a maintenance allowance of Rs. 300/- per month is just and proper. Under the circumstance I conclude that the application for revision has no force and is liable to be dismissed.

ORDER

The application for revision is dismissed. The stay order dated 20.7.1987 passed in this case stands vacated.

