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Court : Allahabad

Decided On : Sep-15-1989

Reported in : I(1990)DMC38

Judge : S.R. Bhargava, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125 and 125(2);
[Hindu Marriage Act, 1955](#) - Sections 13 and 24

Appeal No. : Criminal Revision No. 1322 of 1989

Appellant : Khem Chand

Respondent : State and anr.

Judgement :

S.R. Bhargava, J.

1. Presented in Chamber on account of the strike of the Advocates.
2. This revision is directed against revisional order granting maintenance of Rs. 150/- per month to opposite party No. 2. What appears is that the Magistrate refused maintenance to the wife only on the ground that the wife has been living in adultery. Finding of adultery was recorded by the Magistrate on the sole testimony of the husband who deposed that the wife herself admitted her illicit relation with a young boy aged about 18 or 19 years of her village. He further deposed that on his

visit to her in-laws he saw the wife in compromising position with that boy. He was unable to name the boy. Learned revisional court disbelieved the husband and set aside the finding of adultery. He found that the husband has been earning his livelihood as labourer. He further found that the wife has no means. With these observations the revisional court allowed the revision and directed the husband to pay monthly maintenance of Rs. 150/-per month from 1-10-83.

3. It is, no doubt true that in revision evidence cannot be reassessed. But if in assessment of evidence a legal mistake has been committed by the trial court, the same can be corrected in revision. Cardinal principle is that in matrimonial or maintenance cases solitary evidence of a spouse attributing unchastity or adultery to the other party, should not be relied upon because such spouse is extremely interested in the case. Hence even if reassessment of the evidence done by the lower revisional court is set aside, the result would be the same, i.e. the finding of the Magistrate regarding adultery cannot be legally sustained.

4. It should, however, be remembered that Section 125(2) Cr.P.C. makes the maintenance allowance payable from the date of the order, or, if so ordered, from the date of the application for maintenance. This clearly shows that the Magistrate or Sessions Judge has no jurisdiction to order payment of maintenance allowance from date prior to the date of application for maintenance. From lower court's judgment it does not appear that 1-10 83 is the date of application of the wife for maintenance.

5. It has been further contended in this revision that the husband has already filed a petition for divorce and in that petition he has been directed to pay maintenance to the wife. Double payment of maintenance is not intended by law. If any money has been paid or deposited towards payment of maintenance in the divorce petition, the same is liable to be adjusted in the payment of maintenance ordered under Section 125 Cr.P.C.

6. It was further pointed out that the husband is only a labourer and has no means to pay maintenance to the wife. He is able-bodied and under law he is bound to maintain his wife. He cannot be exonerated from payment of maintenance to the wife on the ground that his income is too meagre. In the present state of spiralling

prices, the maintenance of Rs. 150/- per month cannot be called excessive.

7. In result this revision is finally disposed of in the light of the observations made above and with specific directions that the husband revisionist shall be liable to pay maintenance only from the date of the application of the wife and further if any payment or deposit has been made in civil proceedings between the parties towards payment of maintenance to the wife, the same shall be adjusted in the maintenance payable to the wife under Section 125 Cr.P.C.

8. A copy of this order may be issued to the revisionist on payment of usual charges within three days.

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